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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 233.

SAMUEL R. BRICK AND THE WASHINGTON GAS-LIGHT COMPANY, APPELLANTS,

vs.

JULIA E. BRICK, EDWARD D. WHITE, AND JAMES HOW, EXECUTORS OF JOSEPH K. BRICK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 13, 1876.

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1 *Bill of complaint.—Filed May* 9, 187 .

In the supreme court, D. of C., at a special term in equity.

JULIA E. BRICK, EDWARD D. WHITE, AND James How, executors of Joseph K. Brick, plaintiffs,
*v.*
SAMUEL R. BRICK AND THE WASHINGTON GAS-Light Company, defendants.
No. 3625.

The plaintiffs in the above entitled cause file this their bill of complaint against the defendant, and say:

1. They are each and every of the plaintiffs citizens of the United States, and also citizens of the city of Brooklyn, in the State of New York; and further, that letters testamentary on the last will and testament of Joseph K. Brick, late of said city of Brooklyn, deceased, were duly granted and issued to them, the said plaintiffs, by the surrogate's court of King's County (in which the said city of Brooklyn is), on the 11th day of April, 1872, a certificate whereof under the seal of said court in due form is herewith exhibited, marked A, as part of this bill; and they duly qualified as executors as aforesaid.

2 2. The above-named defendant, Samuel R. Brick, is also a citizen of the United States, residing in the city of Philadelphia, Pennsylvania, and the other defendant, the said gas company, is a corporation in the city of Washington and District of Columbia, chartered by the Congress of the United States.

3. The plaintiffs further state and show that on the 29th of September, 1864, the said Joseph K. Brick in his lifetime purchased through his said brother, Samuel R., two hundred and fifty shares of the capitol stock of the said Washington Gas-Light Company at twenty-one dollars per share, making $5,250, which he paid for by his check on that date, and on the 6th day of October, 1865, received from this company a certificate for said shares of stock, a true copy whereof they file herewith marked B, and make the same part of this bill, which certificate was found by plaintiffs among the papers of their said testator; and your orator, Julia E. Brick, personally knows the fact of said purchase, and that the said testator always had the certificate to the day of his death, and they put it into the inventory of the said estate when the same was filed in the said surrogate's court, in the year 1868, of which the said Samuel R. Brick, and all others the next kin of the testator, had due notice.

4. They further state and aver that the said testator made the said purchase at the instance of the said Samuel R. Brick, and upon his promise to defend him against loss in such purchase, the object being to aid the said Samuel in some matters of business with the said Washington Gas-Light Company, and not for any speculation of his own, and he from time to time spoke of it as though it were the said Samuel's property. But they aver that the said Samuel never did pay, nor did he enter into any contract or agreement to or with the said Joseph K. Brick in his lifetime, or to and with the plaintiffs since the death of
3 the said Joseph K., to pay for the said stock, or any part thereof; while it is true that the said Joseph K. in his lifetime having purchased the said stock, as has been stated, in order to assist the said Samuel K., and the stock proving unproductive, and he, on the third of July, 1865, having returned its value in his tax list, in order to get rid

of the said tax and to make the said Samuel pay the same, made oath on the 5th May, 1866, and on the 25th July, 1866, that it was the said Samuel's, and held by him for Samuel's use, and said Samuel R. made the same statement to the officers of the said Washington Gas-Light Company, and that he had guaranteed the said Joseph K. against loss by reason of his purchase thereof, as aforesaid, all which will more fully and at large appear by reference to exhibits marked C, D, E, & F, herewith filed and made part hereof, being true copies of the original papers, the exhibit marked F being in the genuine handwriting of said Samuel R. Brick; and on the 13th May, 1866, the said Samuel R. Brick wrote to the said Joseph K. as follows:

SUNDAY, 13*th May.*

DEAR BROTHER: You wrote me the other day in a great hurry about your stock; and I answered at once; since which time I have not heard from you, whether it met with your approbation or not; you will let me know, as I don't wish to keep parties waiting.

And again on the 16th December, 1866, the said Samuel R., writing to the said Joseph K., among other things, says: "Brother Joe, you scolded me at one time pretty hard about that Washington gas stock; now what will you take for it—clean out—let me know; which said letters plaintiffs pray leave to prove at the hearing." And the plaintiffs aver that neither in the year 1866, nor at any other time during
4 the life of the said Joseph K., did he accept from the said Samuel R. any offer for the purchase of the said stock, nor did he let the said Samuel know what he would take, but to the contrary thereof, they say that the said Joseph determined to keep the said stock himself, and retained the same to the day of his death.

5. And now, further, that the said Joseph K. died on the seventh day of August, 1867, and long after his death, to wit, on the 20th day of January, 1871, the said Samuel R. Brick, falsely pretending that the said stock belonged to him, and was purchased by the said Joseph K. for his use, he, said Joseph K., advancing the money therefor, to be repaid with interest by the said Samuel at some future indefinite period, filed his bill in this honorable court against the said Washington Gas-Light Company, and Edward D. White and Joseph Merritt (who had been appointed collectors of the estate of said Joseph K. Brick by the surrogate's court of Kings County aforesaid, pending a caveat against the probate of said will of the said Joseph K. Brick, filed by the said Samuel R. in the said surrogate's court), a case in which this honorable court could not possibly have or acquire jurisdiction to decide the title to the said stock; and in said bill prayed for an injunction to restrain the said Gas-Light Company from allowing the said stock to be controlled or transferred to the collectors, and the case was so proceeded in that an injunction was ordered as prayed, and an ex-parte account was taken by the auditor of this court of the amount due on the said stock by said Samuel R. to said Joseph K. on the basis of his claim set up in said bill; all which, so far as these plaintiffs are concerned, as they are advised, was coram non judice and void.

5 6. The plaintiffs further show that the said will of the said Joseph K. Brick was afterwards duly and lawfully admitted to probate, and was by them proved in the said surrogate's court, and letters testamentary thereon were duly granted by said court to these plaintiffs, and thereupon they demanded of the Washington Gas-Light Company to pay to them the accrued dividends now standing on the books of the

said company, and due and unpaid on said stock, and also to permit them to transfer to themselves as executors aforesaid, or to such persons as they should see fit, the said two hundred and fifty shares of said stock mentioned in the said certificate hereinbefore set out, but the said company has refused to pay the said dividends or to allow the said stock to be transferred as aforesaid, setting up and alleging that they are restrained from doing so by the injunction of this court issued as aforesaid; whereas these plaintiffs say they were not parties to the said suit and are in no manner bound or affected thereby; and the said defendant, the said Gas-Light Company, further set up and pretend that the said Samuel R. Brick, hath in the said cause (which cause is numbered 2260, in equity docket No. 10, of this honorable court) obtained a decree in his favor by which his, the said Samuel's, right to said stock and said dividend hath been established; and the said Samuel R. Brick sets up and pretends the same things; whereas it is manifest that the said pretences are absolutely vain and without foundation in law or fact.

7. Your orators show that they are without relief in the premises save by the authority of this court, in which such and matters of the like kind are cognizable.

8. Wherefore, may it please your honors to order process against the said defendants, Samuel R. Brick and the Washington Gas-Light Company, that they appear and severally answer this bill of com-
6 plaint, and every matter and thing therein contained, and particularly as though each and every part thereof was herein repeated, and they and each of them specially and particularly interrogated as to each and every of said facts; and the said Samuel R. Brick be forever restrained by the injunction of this court from pretending or setting any claim to the said stock or to the dividend thereon, or to any part of principal or dividends aforesaid, and be ordered and required to dismiss his said bill in the said cause, No. 2260, and on his failure so to do, that it be dismissed by order of this honorable court; that the said Washington Gas-Light Company be ordered to pay to your orators all and whatsoever dividends are now due on said stock mentioned in the said certificate for two hundred and fifty shares hereinbefore exhibited, and to suffer and permit your orators to transfer on the books of said company the said two hundred and fifty shares to themselves or to such other person or persons as they may see fit; that the said Samuel R. Brick be ordered to pay all the costs of this suit, and for such and other further relief, as the premises considered, may seem meet to this honorable court.

JULIA E. BRICK.

JOS. H. BRADLEY,
*Plaintiffs' Solicitors.*

STATE OF NEW YORK,
*County of Kings, City of Brooklyn, ss:*

The facts stated in the annexed bill of complaint, which I have carefully read and know its contents, are true, so far as the same are stated, as of my own knowledge, and those stated on information derived from others, I believe to be true.

JULIA E. BRICK.

7 Sworn to this 20th day of February, A. D. 1874, by the within-named Julia E. Brick, at Brooklyn aforesaid.

In witness whereof, I have hereunto subscribed my name, and affixed

my seal of office, at Brooklyn, in Kings County, State of New York, this 20th day of February, 1874.

STEPHEN C. BETTS,
*Notary Public, Kings Co.*

STATE OF NEW YORK:

I, George G. Herman, clerk of the county of Kings, and clerk of the supreme court of the State of New York (said court being a court of record), do hereby certify, that Stephen C. Betts, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of the State of New York, in and for the said county, dwelling in said county; and further that I am well acquainted with the handwriting of such notary, and verily believe the signature to said deposition is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county and court, this 20th day of February, 1874.

[SEAL.] GEORGE G. HERMAN, *Clerk.*

8 *Exhibit A to bill.*

Plaintiff's Exhibit A.

STATE OF NEW YORK,
*Surrogate's Court, County of Kings:*

I do hereby certify that, at the city of Brooklyn, in the county of Kings, on the eleventh day of April, in the year of our Lord one thousand eight hundred and seventy-two, at a surrogate's court, then and there held, before William D. Veeder, esq., surrogate of said county, letters testamentary on the last will and testament of Joseph K. Brick, late of the city of Brooklyn, deceased, were duly granted and issued to Julia E. Brick, Edward D. White, and James How, and that the same are still valid and in full force.

In testimony whereof, I have hereunto set my hand and affixed the seal of the surrogate's court, this 24th day of December, in the year 1873.

[SEAL.] JUDAH B. VORHEES,
*Clerk to Surrogate Court.*

*Exhibit B to bill.*

Plaintiff's Exhibit B.

(Copy of certificate.)

No. of certificate 1311. No. of shares 250.

Washington Gas-Light Company.

It is hereby certified that Joseph K. Brick is the owner of two hundred and fifty shares of the capital stock of the Washington Gas-Light Company, transferable only on the books of the company, in person or attorney, on the delivery of this certificate.

Witness the seal of said company, and the signatures of the president and secretary at the city of Washington, D. C., the 6th day of October, A. D. 1864.

(Signed) GEO. W. RIGGS,
*President.*

[SEAL.] (Signed) J. T. BROWN, *Secretary.*

(Capital authorized by Congress, 500,000 shares, $20 each.)

9 *Exhibit C to bill.*

Plaintiff's Exhibit C.

COUNTY OF KINGS,
*City of Brooklyn, ss:*

Joseph K. Brick, being duly sworn, deposes and says, that his business is that of a fire-brick manufacturer; that his place of business is at Van Dyke st.; that his residence is at No. Layfayette, cor. Vanderbilt ave., in the 20th ward.

That the amount of personal property held by him, after deducting his just debts and liabilities, exclusive of stocks of incorporated companies in this State, does not exceed the sum of..... $1 $\frac{00}{100}$

That the amount of stocks and bonds held by him, of others States, or incorporated companies out of this State, does not exceed the sum of.. $5,000 of the Washington Gas Light Co. bonds, D. C.

That the amount of personal property held by him, as administrator for does not exceed the sum of..... $

That the amount of personal property held by him, as executor for does not exceed the sum of..... $

That the amount of personal property held by him, in trust for does not exceed the sum of..... $

That he has no personal property of any description in his possession not included in the above statement.

J. K. BRICK.

Sworn to before me this 3d day of July, 1865.

JOHN DOHERTY,
*Comm'r of Deeds.*

10 *Exhibit D.*

Plaintiff's Exhibit D.

(Paper No. 2.)

COUNTY OF KINGS,
*City of Brooklyn, ss:*

J. K. Brick, being duly sworn, deposes and says that his residence is at No. , cor. Layfayette and Vanderbilt av'e, in the 20th ward.

That the amount of personal property held by him, after deducting his just debts and liabilities, exclusive of stocks of incorporated companies in the State, does not exceed the sum of.... $1 $\frac{00}{100}$

That he has no personal property of any description in his possession not included in the above statement.

J. K. BRICK.

Sworn to before me this 25 day of July, 1866.

JNO. DOHERTY,
*Assessor.*

*Exhibit E.*

Plaintiff's Exhibit E.

(Paper No. 3.)

KINGS COUNTY,
*City of Brooklyn, ss:*

Joseph K. Brick, being duly sworn, says that in the month of July, 1865, he made a statement of his personal property to the board of assessors of said city, and therein stated that the amount of personal property held by him of any kind whatever, over and above his just debts and liabilities at that time, did not exceed the sum of $1.00. Deponent further says that he was erroneously assessed in said year to the amount of $5,000, and that the said error arose from deponent having in-
11 serted in said statement $5,000 stock held by him for his brother; and further, that deponent had no pecuniary interest in said $5,000, and makes this affidavit with a view to have said error corrected.

Sworn to before me this 5th day of May, 1866.
(Signed) J. K. BRICK.

(This is an interpolation—no name is written here—it is blank.)
*Commissioner of Deeds.*

I certify that the above is a true copy of the original on file in the office of the board of assessors.
(Signed) HENRY C. RIPLY,
*President Board of Assessors.*

*Exhibit F.*

Plaintiff's Exhibit F.

(Paper No. 4.)

BROOKLYN, *May 5th*, 1866.

DEAR BROTHER: If you remember, some year and a half ago, when I got the Washington Gas-Light stock, I took it to give you strength in the company, which was the fact. Now there is a State law in this State that gives assessors power to assess all stocks owned outside of the State, to the full amount, at the same rate as real estate, which is about 3½ per c't; at that rate you see what little advantage it would be for me to hold stocks outside of the State. Now this has been got hold of by our assessors, and I made the above statement to set them aside. I told them it stood on the books in my name, but I held it for your benefit, which is so, as I should never have bought under any other circumstances.

Now, I want you, as soon as you receive this, advise the president or secretary that such is the case, and if they write from here to know anything about the matter, to say so or pay no attention to them.

In the mean time I will give you a power of attorney to sell or take it to yourself, as I need the funds very much in my business, and must raise some money at once.

Please let me hear from you what it is worth in your market. I cannot afford to hold it, as I want money badly and that pays nothing.

I hope you will loose no time about writing to the secretary or president, as it may be.

I have been hoping to come on before this, but have been too unwell
* * *

Yours, &c.,
(Signed) JOSEPH.

12 *Summons to answer bill.*

In the supreme court of the District of Columbia. March 9th, 1874.

JULIA E. BRICK ET AL., COMPLAINANTS,
*against*
SAMUEL A. BRICK ET AL., DEFENDANTS.
No. 3625. Equity docket 13.

The President of the United States to Samuel R. Brick and the Washington Gas-Light Company, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Carter, chief justice.

R. J. MEIGS, *Clerk*,
By L. C. WILLIAMS,
*Ass't Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise, the bill may be taken for confessed.

*Return.*

Service acknowledged, and the clerk will enter my appearance for all the defendants.
Mar. 10, 1874.

W. B. WEBB, *Sol'r.*

13 *Record of cause No. 2260. In equity as referred to in bill of complaint.*

In the supreme court of the District of Columbia, the 24th day of January, 1871. In equity.

SAMUEL R. BRICK, PLAINTIFF,
*vs.*
EDWARD D. WHITE, JOSEPH MERRITT, & THE Washington Gas-Light Company, defendants.

To the supreme court of the District of Columbia holding an equity court for said district:

The plaintiff complains as follows:

1. That he is a citizen of the city of Philadelphia, in the State of Pennsylvania.

2. That the defendants, Edward D. White and Joseph Merritt, are citizens of the city of Brooklyn, in the State of New York, and that the Washington Gas-Light Company is an incorporated com-
14 pany organized under an act of Congress entitled "An act to in-

corporate the Washington Gas-Light Company," and approved the 8th of July, 1848, and during business in the city of Washington.

3. That in October, 1864, he was the owner of a large number of shares of the stock of the said Washington Gas-Light Company, which he had purchased before that time; that being well acquainted with the affairs of the said company, whose works he had built, and having confidence in its success and in the estimate value of its stock, he was desirous to purchase more of said stock, and finding that certain shares belonging to William Bucknell were for sale he became the purchaser thereof; that not being able to pay for all of said shares, so last as
15 aforesaid purchased by him, he applied to his brother Joseph K. Brick, formerly of the city of Brooklyn, in the State of New York, now deceased, for a loan of the sum of money necessary to enable him to make said purchase; that his said brother agreed to and did loan him the money for which he made application, and that he accordingly purchased the stock in question; that for the better security of his said brother, the said Joseph K. Brick, he caused the said stock so last purchased by him, or rather two hundred and fifty shares thereof, to be transferred upon the books of the said gas-light company to his said brother, thereby causing the same to stand upon the said books in the name of his said brother, in which name they have continued to
16 stand from that time, and still continue to stand upon the said books; that the transfer of said shares was made in manner as aforesaid as a security to the said Joseph K. Brick for the amount of their then value, to wit, twenty-one dollars per share, or five thousand two hundred and fifty dollars for the whole amount of their said value, the said sum of five thousand two hundred and fifty dollars being the sum loaned by the said Joseph K. Brick to the plaintiff.

4. That it was understood between plaintiff and his said brother Joseph K. Brick, that the transfer of the said two hundred & fifty shares of the said stock of the Washington Gas Light Company should be and operate as a security for the loan to said plaintiff of the said sum of five thousand two hundred and fifty dollars, and that upon the pay-
17 ment at anytime by plaintiff to said Joseph K. Brick of the said sum of five thousand two hundred and fifty dollars, with interest thereon, he, the said Joseph K. Brick, would transfer the said shares of stock to the plaintiff; that during his lifetime the said Joseph K. Brick frequently re'ognized said agreement as subsisting; that on the 12 of September, 1864, the said Joseph K. Brick wrote to plaintiff in reference to an application for the loan of the said sum of five thousand two hundred & fifty dollars, informing said plaintiff that he could raise money for him at seven per cent. per annum, as will appear from the said letter which is hereto annexed, made part of this bill, and marked Exhibit A; that on the 5th of May, 1866, the said Joseph K. Brick made the affidavit of which a certified copy is hereto annexed, in which he makes oath that he was enormously assessed in 1865, to the amount of
18 $5,000, and that the said sum arose from his having inserted in the statement made by him in July of the said year, 1865, $5,000, stock held by him for his brother (meaning plaintiff), and that he had no pecuniary interest in said stock, all of which will more fully appear from the said copy of said affidavit hereto annexed and made of this bill, marked Exhibit B; that the stock mentioned in said affidavit, Exhibit B, are the shares of the stock of the Washington Gas-Light Company, heretofore mentioned as held by said Joseph K. Brick as security for the loan to plaintiff of $5,250 under the agreement aforesaid, as will appear to the court from the certified copy of the statement (sworn)

of his personal property made, by said Joseph K. Brick, in the month of July, 1865, hereto annexed, and marked Exhibit C, and made part of this bill, and which is the statement referred to in the said affidavit; that in the same date, that is to say, the 5th of May, 1866, the said Joseph
19 K. Brick wrote to the plaintiff informing plaintiff that he, said Joseph, was much in need of funds, and desiring plaintiff to pay the said sum for which the aforesaid shares of Washington Gas-Light Company stock were held as security; that on the 7th of May, 1866, the said plaintiff, in reply to the said last-mentioned letter, wrote to his said brother, the said Joseph K. Brick, giving him a statement of the then amount of the debt and interest accrued thereon, and offering to pay the amount then due and owing in accordance with the aforesaid agreement; that owing to the fact that plaintiff and his said brother lived in different cities, and saw each other only at rare and distant intervals, and also to the ill health of his said brother and his subsequent unfitness for business affairs, nothing more was done in the matter of the said shares of stock and the aforesaid agreement was not caused into effect,
20 though plaintiff was always ready to fulfil the same.

5. That in August, 1867, the said Joseph K. Brick departed this life without having any transfer of the aforesaid shares of the stock of the said Washington Gas-Light Company to the plaintiff, and that said shares are still standing upon the books of the said company, where they are alone transferable in the name of the said Joseph; that by his last will and testament of the said Joseph K. Brick, deceased, devised his entire estate, real, personal, and mixed, which is of very great value, to his wife absolutely; that a caveat has been filed against the probate of the said will, which has not yet been admitted to probate; that on the 22d day of October, 1868, at a surrogate's court then held in the county of Kings, in the Satate of New York, letters of collection on the goods, chattels, and credits of the said Joseph K. Brick were granted and issued to the defendants, Edward D. White and Joseph
21 Merrett; that plaintiff has more than once since the death of said Joseph offered to pay the said sum of five thousand two hundred and fifty dollars so as aforesaid loaned to him by the said Joseph K. Brick, together with accrued interest, and has requested that an assignment of the said shares of the stock of the said Washington Gas-Light Company shall be made to him in fulfilment of the aforesaid agreement; that the said defendants, the said Edward D. White and Joseph Merrett, have hitherto refused, and still refuse, to accept the said payment of the said sum of money, or to make said assignment, and have, plaintiff is advised and believes, filed with the secretary of the said Washington Gas-Light Company a certified copy of the said letters of collection so as aforesaid granted to them by the surrogate of Kings County, in the State of New York, and have required that the said shares of said
22 stock shall be held for the benefit of the estate of the said Joseph K. Brick, and as part thereof, and that the dividends accrued and to accrue and be paid on account of said stock on the shares thereof shall be paid to them.

6. That the said shares of stock of the said Washington Gas-Light Company so as aforesaid standing in the name of the said Joseph K. Brick upon the books of the said company of right belong to the said plaintiff, and were held by the said Joseph K. Brick only as security for the payment of the said loan of five thousand two hundred & fifty dollars in manner as aforesaid, and that said plaintiff is entitled now by paying the said sum so loaned with interest thereon to redeem said shares of stock, and to have the same transferred to him upon the books

of the said company; that by the by-laws of the said Washington
23 Gas-Light Company the shares of the stock of said company are transferrible only on the books of the company, and that a surrender of the certificates of said stock is required to be made to the secretary of the company when any such transfer is made; that by the actings and doings of the said defendants the said Edward D. White and the said Joseph Merrett, all of which are against equity and good con'cience, this plaintiff is to be deprived of the said shares of stock in said Washington Gas-Light Company, which are of right his, and all and every manner of benefit under & by nature thereof.

*Prayer.*

Forasmuch then as plaintiff is without remedy save in this honorable court, may it please the court to grant:

1. The writ of subpœna against the said defendants the said
24 Washington Gas-Light Company and the said Edward D. White and Joseph Merrett, commanding them to be and appear in court on or before a day to be therein named to answer the matters and things in said bill contained, and to shew cause, if any they have, why the plaintiff should not have the relief prayed.

2. A decree referring this cause to the auditor of the court with instructions to ascertain and report to the court what amount is due upon the debt of this plaintiff to the late Joseph K. Brick, deceased, charging interest thereon against said plaintiff, and allowing as a credit to said plaintiff any dividends that have been paid to the said Joseph K. Brick on the said shares of stock in the Washington Gas-Light Company so as aforesaid held by him as security for said debt.

3. A further order and decree ordering and adjudging that
25 plaintiff is, upon the payment of the sum so as aforesaid found to be due on account of the said debt to the said Joseph K. Brick, entitled to redeem the said stock, and to have the same transferred to him, said plaintiff, upon the books of the said Gas-Light Company, and further ordering that the said transfer shall be accordingly made.

4. The most gracious writ of injunction restraining and forbidding the said Washington Gas-Light Company from permitting any transfer to be made of the said shares of stock now standing upon its books in the name of the said Joseph K. Brick, in any manner or form, or to any person or persons upon said books, and also from paying to any person or persons any dividend either of stock or money accrued or to accrue upon the said shares of stock until the further order of the court.

26 5. Such other and further relief as to the court, the cause having been duly considered by the court, it may seem that the plaintiff is entitled to.

As in duty bound the plaintiff will ever pray, &c.

SAM'L R. BRICK.

W. B. WEBB, *Sol'r.*

I do solemnly affirm that I have read the bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

SAM'L R. BRICK.

Subscribed & affirmed to before me this 27th day of January, 1871.

[SEAL.] JAMES SNOWDEN.

27 In the supreme court, District of Columbia, Jan'y 28th, 1871.

SAMUEL R. BRICK, COMPLAINANT,
*vs.*
EDWARD D. WHITE ET AL., DEFENDANT. } No. 2260. Equity.

The President of the United States to Edward D. White, Joseph Merritt, and Washington Gas-Light Company, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Asst.*

MEMORANDUM.—That the defendants are to *to* enter their ap-
28 pearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

I do authorize & depute L. M. Graves to serve this writ.
Jan'y 28th, '71.

A. SHARP, *Marshal.*

Sum'd the secretary, C. B. Bailey, this 30th of January, '71.
Not to be found the others.

A. SHARP, *Marshal.*

29 In the supreme court of the District of Columbia, January 31st, 1871.

SAM'L R. BRICK
*vs.*
WASHINGTON GAS-LIGHT CO. ET AL. } No.

On Tuesday, the 7th day of February, 1871, at 11 o'clock a. m., a motion for an injunction will be heard before said court.

You are hereby notified to appear and show cause, if any you have, against said motion, and in the mean time this order shall operate as such injunction.

By the court.

MAC ARTHUR, *Justice.*

30 In the supreme court of the District of Columbia, the 31st day of January, 1871.

SAMUEL R. BRICK
*vs.*
EDWARD D. WHITE, JOSEPH MERRITT, & THE Washington Gas-Light Co. } No.

On motion of the complainant, by Kennedy & Webb, his solicitors, it is ordered that the defendants Edward D. White & Joseph Merritt cause their appearance to be entered herein on or before the first rule

day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

True copy. Test.

By the court.

MAC ARTHUR, *Justice.*

31 OFFICE OF THE NATIONAL REPUBLICAN,
*Washington, April* 13, 1871.

I hereby certify that the advertisement of which the annexed is a copy was published in the Daily National Republican once a week for three successive weeks, commencing February 4, 1871.

W. J. MURTAGH,
*Proprietor Nat'l Republican.*

Sworn and subscribed before me this 13th day of April, 1871.

[SEAL.] JO'S T. R. PLANT, *J. P.*

32 In the supreme court of the District of Columbia, the thirty-first day of January, 1871.

SAMUEL R. BRICK
*vs.*
EDWARD D. WHITE, JOSEPH MERRITT, AND The Washington Gas-Light Co. } No. 2260. Eq. dock. 10.

On motion of the complainant, by Kennedy & Webb, his solicitors, it is ordered that the defendants Edward D. White & Joseph Merritt cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court.

MAC ARTHUR, *Justice.*

True copy. Test:

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
*Ass't Clk.*

33 In the supreme court of the District of Columbia, the 31st day of January, 1871.

SAMUEL R. BRICK
*vs.*
EDWARD D. WHITE, JOSEPH MERRITT, AND The Washington Gas-Light Co. } No. 2260. Eq. dock. 10.

On motion of the complainant, by Kennedy & Webb, his solicitors, it is ordered that the defendants Edward D. White & Joseph Merritt cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court.

MAC ARTHUR, *Justice.*

True copy. Test:

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
*Ass't Clerk.*

34 STATE OF NEW YORK,
*County of Kings, City of Brooklyn, ss:*

John Courtney, of the city of Brooklyn, being duly sworn, doth depose and say that he did, on the 16th day of March, 1871, personally serve an order of the supreme court of the District of Columbia, of which the within is a copy, upon Edward D. White, therein named, by delivering to and leaving with him the said order; he did, also, on the 20th day of March, 1871, personally serve an order of the supreme court of the District of Columbia aforesaid, of which the within is a copy, upon Joseph Merritt, therein named, by delivering to and leaving with him the said order.

JOHN COURTNEY.

Subscribed & sworn to before me this 20th day of March, 1871.
[SEAL.] JUDAH B. VOORHEES,
*Notary Public, Kings County.*

35 In the supreme court of the District of Columbia.

| | |
|---|---|
| SAMUEL R. BRICK<br>*v.*<br>EDWARD D. WHITE, JOSEPH D. MERRITT, & The Washington Gas-Light Company. | No. 2260. Equity doc. 10. |

This cause coming on to be heard upon bill, &c., and having been duly considered by the court, and it appearing to the court that the order of the court requiring the defendants White and Merritt, and the subpœna issued against the said defendant, The Washington Gas-Light Company, have been duly served, and that said defendants have failed to appear and answer the exigencies of the said bill, it is, upon motion of plaintiff's solicitor, this 27th day of May, 1871, ordered and adjudged and decreed that the bill filed in this cause and the allegations
36 thereof be and the same are hereby taken for confessed against said defendants, and that said cause be referred to the auditor of the court with instructions to ascertain and report what amount is now due upon the debt of the plaintiff to the late Joseph K. Brick, deceased, said auditor in making such account to charge the said plaintiff with interest upon such debt, and allow as a credit any dividends that may have been received by the said Joseph K. Brick during his life time upon and on account of the shares of the capital stock of the said Washington Gas-Light Company which it is alleged were held by said Joseph K. Brick as security for the indebtedness of the said plaintiff.

And it is further ordered and decreed that the said plaintiff is,
37 and is hereby declared to be, the owner of the said shares of the capital stock of the said Washington Gas-Light Company now standing in the name of the said Joseph K. Brick upon the books of the said company, and that the said shares were held by the said Joseph K. Brick as col'ateral only for the indebtedness of the said Samuel R. Brick to said Joseph K. Brick, and that said Samuel R. Brick, the plaintiff, is entitled, upon the payment of the sum found due by the auditor upon said indebtedness, to redeem the said stock and to have the same transferred to him upon the books of the said company; and the said Washington Gas-Light Company is hereby ordered, upon the payment of the said indebtedness so found to be due by the auditor of the court in manner aforesaid, to transfer the said shares of its
38 capital stock now standing and being in the name of the said Joseph K. Brick to the said plaintiff in due form of law.

And it is further ordered that the injunction prayed for be made perpetual, and that the said defendant, the said Washington Gas-Light Company, be and it hereby is forever restrained and forbidden from making any transfer of the said stock so as aforesaid standing in the name of the said Joseph K. Brick to any person or in any manner whatever without the further order of the court.

By the court.

MAC ARTHUR,
*Justice.*

39 SCHEDULE A.

*Samuel R. Brick in ⅜ with estate of Joseph Brick, dec'd.*

| | | |
|---|---|---|
| To am't loan from Joseph Brick, deceased..... | 5,250 | |
| " int. on above from Oct., 1864, to date, @ 7 % p'r annum ..... | 3,018 75 | |
| | | 8,268 75 |
| CR. | | |
| By payments of dividends to Joseph K. Brick by Gas-Light Company..... .... | 1,000 | |
| " interest on above..... | 368 75 | |
| | | 1,368 75 |
| Balance due by Sam'l Brick to estate of Joseph Brick, deceased..... | | $6,900 |

W. S. COX, *Aud.*

40 In the supreme court of the District of Columbia.

SAMUEL R. BRICK
*vs.*
EDWARD D. WHITE & ET AL. } No. 2260.

The auditor is instructed by an order of reference, dated May 29, 1871, to ascertain and report what amount is now due upon the debt of the plaintiff to the late Joseph K. Brick, deceased.

Schedule A annexed hereto will show the amount originally advanced by Joseph Brick and the amounts which have been paid as dividends by the Gas-Light Company to said Joseph Brick.

The balance found to be due by the complainant to the estate of Joseph Brick, deceased, is $6,900, this result having been reached from the proceedings in the cause heretofore and depositions taken before me, which last are herewith returned.

WALTER S. COX,
*Auditor.*

41 EXHIBIT X.

Two hundred and fifty shares (250) transferred to Joseph K. Brick, of Brooklyn, N. Y., Oct. 6, 1864, by W'm Bucknell, thro' J. F. Brown, att'y, and certf. No. 1311 issued to him of that date.

Dividends drawn by J. K. Brick:

| | |
|---|---|
| Feb'y 23, 1866 | 250 |
| Aug. 7, " | 250 |
| Feb'y 6, 1867 | 250 |
| Aug. 7, " | 250 |
| | $1,000 |

Dividends suspended between July 15th, 1863, & Feb'y 10th, 1866.

C. B. BAILEY, *Sec'y.*

JUNE 29, 1872.

Exhibit X with Sam'l R. Brick's deposition.

W. S. COX.

42 BRICK *vs.* WHITE ET AL. } 2260. Eq. doc.

Samuel R. Brick, being duly sworn, says:

I am complainant in this suit. I reside in Phila., and am 63 years of age. Joseph K. Brick, who is now deceased, was my brother. He resided in New York, at Brooklyn.

In Sept., 1864, I bought a number of shares of Washington City Gas-Light stock from William Bucknell, Phila.; I paid him part in cash and gave him my note for the balance, he agreeing to carry the same (hold the stock) in that way for a time. At this time he transferred to me a part of the stock and held the balance. Previously to the notes falling due I saw that I might perhaps be hampered in money matters, and I applied to my brother Joseph for assistance. In October, 1864,
43 before the said note fell due, I arranged with my brother to make an advance to me of $5,250.00, which stands yet unpaid to my brother's estate.

M'r Bucknell, at my request, transferred and delivered the stock, 250 shares, to my brother, for him to hold as collateral security. In addition to putting the same in his hands as collateral, another object was that his name might appear on the books of the company as a stock-holder, with a view to getting some of the trade of the gas company, he being a manufacturer of clay retorts and fire-bricks for gas-works. I paid M'r Bucknell for all the stock. My brother demanded the money advanced me on this stock on several occasions, and I, several times, orally and in writing, requested my brother to give me power of att'y to have stock transferred and I would remit
44 him the money, principal & interest. My brother was a man of immense fortune, and died leaving an estate worth near one million of dollars; but his money was in real estate and in his business, and at times he would want money. It was at such times that he would write to me to settle with him the amount advanced me on the stock, and then in a day or two, carrying on a large business as he did, money would come in and he would not accept the money from me, but allow the loan to go on. He knew that I was not flush with money. I had then my money tied up in real estate and otherwise, so that I could not realize without great sacrifice, and my brother was aware of this fact. Occasionally I made arrangements to borrow money at the times I expected my brother's demands to be made. I built the works of the Washington Gas-Light Company and knew all about the value of their stock. I knew that on account of the large surplus

45 in the hands of the company the stock was worth double its face. That was my great incentive in always exerting myself to be prepared for any positive demands made upon me for the money by my brother. I did not want to and determined not to loose the stock.

Since my brother's death I have made application to persons representing the estate of my brother, offering to pay the principal and interest due, and urged that a transfer of the stock should be made to me. They have up to this time hesitated, and I was obliged to commence these proceedings. I file here a statement of dividends on said stock which were drawn by my brother from the gas-light company. This statement was prepared by the secretary of the gas-light company and sent by him to my counsel. The statement is marked Exhibit X.

My brother rec'd all the dividends because he was desirous to
46 appear as a stockholder for the purpose aforesaid of getting the trade of the company.

Exhibit A to the original bill is a letter written by my brother to me in answer to my letter asking for a loan of the stock.

I file herewith a letter from my brother Joseph to me in regard to this stock. It is marked Exhibit Y. This letter was written after a conversation I had with my brother.

SAM'L R. BRICK.

Sworn to & subscribed before me the 28th June, 1872.

W. S. COX, *Aud'r.*

47 Joseph F. Brown, being duly sworn, says:

I am resident of Washington, D. C. I was for 15 y'rs in charge of the Wash'n City Gas Works. Have know Sam'l R. Brick for twenty years, intimately. I knew Joseph K. Brick in his lifetime intimately; have been at his house a hundred times. He furnished three things to gas companies, retorts, fire-bricks, and tile, and he furnished the company with most of those things they purchased.

In the spring of 1865, say in May, Jos. K. Brick came here and was entertained at my house. During the time he was here we held a conversation in regard to the interest he had in the Wash'n Gas-Light Company, I being secretary in charge of the company. He told me that the stock belonged to his brother, Samuel R. Brick, to whom he had advanced a sum of money on the stock which stood in his, Joseph's,
48 name on the books of the company. He said that the stock really belonged to his brother Samuel.

I had conversations with him after that, and he affirmed this statement several times, always stating to me that this stock belonged to his brother, Samuel R. Brick, and that he only had loaned money on the stock, taking the stock as collateral security.

JOSEPH F. BROWN.

Sworn to and subscribed before me the 28th of June, A. D. 1872.

W. S. COX, *Auditor.*

49 Charles B. Bailey, being duly sworn, says:

I occupy the office of secretary of the Gas-Light Company of Wash'n, D. C. I have been secretary since Feb'y, 1865. I have the exclusive charge of the books, and have had ever since I was appointed secretary; the books containing the stock and dividends.

Exhibit X, filed herebefore with the deposition of Sam'l R. Brick, is an extract in my handwriting from the stock & dividend books, showing the dividends which have been paid on the stock in question which

stands in the name of Joseph K. Brick on the books of our company. I know that these dividends were sent to New York, and I have either the said Brick's or M'r Burr Weightman's receipts therefor. The latter is a large stockholder of our company; through him we pay dividends to other holders of stock in New York.

CHA'S B. BAILEY.

Sworn to and subscribed before me the 28th day of June, A. D. 1871.
W. S. COX, *Aud'r.*

50 In the supreme court of the District of Columbia, the 1st of Feb'y, 1873.

SAMUEL R. BRICK
*v.*
EDWARD D. WHITE ET ALS. } No. 2260. Equity.

It is by the court this 1st day of February, 1873, upon motion of plaintiff's solicitor, ordered that the report of the auditor filed in this cause on the 19th day of December, 1872, be and the same is hereby confirmed and ratified, it appearing that no exception has been filed thereto.

By the court.

A. WYLIE.

51 *Answer of Def't, S. R. Brick.—Filed May 5, 1874.*

In the supreme court, District of Columbia. The 28th day of April, 1874. In equity.

JULIA E. BRICK, EDWARD D. WHITE, AND James How, executors of Joseph K. Brick
*v.*
SAMUEL R. BRICK, AND THE WASHINGTON Gas-Light Co. } No. 3625. Equity doc. 13.

The answer of the above-named defendant Samuel R. Brick to the bill of complaint of the above-named plaintiff.

In answer to said bill of complaint I say as follows:

1. It is true, as is alleged in said bill of complaint, that the plaintiffs are citizens of the United States, and also of the city of Brooklyn, in the State of New York, and that, as far as I am advised, the let-
52 ters testamentary on the last will and testament of Joseph K. Brick, a copy of which is marked Exhibit A, were on 11th day of April, 1872, issued to said plaintiff by the surrogate's court of Kings County.

2. It is true that I, the said Samuel R. Brick, am also a citizen of the United States, and reside in the city of Philadelphia, in the State of Pennsylvania, and that the other defendant, the said Washington Gas-Light Company, is a corporation in the city of Washington, in the District of Columbia, chartered by the Congress of the United States.

3. I deny that on the 29th of September, 1864, or at any other time, the said Joseph K. Brick purchased through me, his said brother, Samuel K. Brick, two hundred and fifty shares of the capital stock of the said Washington Gas-Light Company for the price mentioned in the said bill; but, to the contrary thereof, I aver and charge, and hold my-

self ready to prove, that on the 26th of September, 1864, I purchased from Gaw, McAllester & Co., of Philadelphia, five hundred shares of the stock of the said Washington Gas-Light Company and paid them for the same with my check on the Manufacturers and Mechanics' Bank of Philadelphia. I was well acquainted with the affairs of the said gas-light company, and, feeling sure that the stock would rise in value considerably, was anxious to purchase all that I could; but, not having the money that I could conveniently devote to that purpose, I applied to my brother, Joseph K. Brick, of Brooklyn, New York, for a loan, and, upon the faith of a letter from him, informing me that he could raise the money for me at seven per cent. interest, I, as soon as I could, after receiving said letter, purchased the five hundred shares of the said stock to which I have referred. My brother loaned me
53 five thousand two hundred and fifty dollars, and for his security, but with the perfect understanding that I could redeem the stock at any time by paying the money loaned, with interest, I caused the certificate for the two hundred and fifty shares of the stock mentioned as purchased by me to be made out in the name of my brother, Joseph K. Brick, and in no other way. My brother died on the 7th of August, 1867, and the inventory of his estate was filed with the proper officer of Kings County, in the State of New York, on the 1st of February, 1869. I deny that the said Julia E. Brick personally knows, as she alleges she does, the fact that the aforesaid two hundred and fifty shares of the stock of said gas-light company were purchased by Joseph K. Brick; but, on the contrary thereof, I aver and hold myself ready to prove that such was not the fact, as I have already hereinbefore averred and charged.

4. It is not true that the said testator made the purchase of said stock at my instance, as said bill alleges, or that he made such purchase at all in fact. I made the purchase of the said stock, as I have before alleged, and having borrowed the money to enable me to pay for part of said stock from my brother, the testator, I caused the stock to be transferred to his name as security to him; there could be no loss to my brother, the said testator, upon the said stock, for the same was simply collateral to his said loan, and I never made any promise to defend him against any loss thereon, as is alleged in said bill of complaint. I deny that there was any object on the part of the said testator, in the transaction in question, to assist me in any matters of business with the said Washington Gas-Light Company, or in the point of fact any object of any kind other than that already mentioned, except that I believe that my brother, the said testator, was, for reasons of his own, con-
54 nected with his business, desirous to have his name appear upon the books of said company, and that he did in fact profit thereby. It is true that my brother, the testator, from time to time, and always, spoke of the stock as belonging to me; and it is also true that I never did in the life-time of my brother offer to pay him, nor since his death have I ever offered to pay plaintiffs for said stock; but I aver that before my brother's death I offered to pay him the sum I owed him, with interest, and to redeem said stock, and was only prevented from so doing by the fact that I only saw my brother at rare intervals, and this and his ill health, and consequent unfitness for business, occasioned delays that terminated only with his death. I have repeatedly renewed the said offer to redeem said stock, by payment of said debt and interest, to the plaintiffs, and this I offer myself ready to prove. It is true that my brother, the said testator, on the 3d of July, 1865, made the return to the board of assessors, herewith filed and marked "A," and on the 5th

of May, 1866, made the affidavit correcting the same set out in the bill, a copy of which is also filed in the returns required of him under the revenue laws of the state of New York, and did make oath that the aforesaid stock did not belong to him, but in point of fact was held by him for me in manner as I have already stated; and it is also true that my brother requested me to inform the officers of the Washington Gas-Light Company that said stock did not belong to him, but was held by him for me, in manner as aforesaid; but I deny that my brother, the testator, in either of the said statements uttered an untruth, or in the direction given to me as to the communication he wished to be made to the president and directors of the said Gas Company, intended or did in fact deceive those officers. My brother, the testator, was an honorable and truthful man, incapable of the falsehood and deceit with which he is charged in this allegation of the bill. I frequently corre-
55 sponded with my brother, and may have written the letter to which reference is made, and from which extracts are quoted, but I have no distinct recollection of them; but it is utterly untrue that the said Joseph K. Brick did not during his lifetime agree to accept the amount due him with interest, and for which said stock was pledged to him, if that is meant by the allegation contained in the last paragraph of the 4th section of said bill, and I utterly deny, as I have done before, that the said stock was the property of said Joseph K. Brick, either to keep or dispose of, as seems to be intimated in said paragraph.

5. It is true that the said Joseph K. Brick died on the seventh day of August, 1867, and that on the 28th day of January, 1871, I, knowing that the stock belonged to me, and not falsely pretending as is alleged, filed the bill in the honorable court, mentioned in the 5th section of said bill of complaint; I deny, however, that under the said bill so filed by me a case is presented in which the court would not possibly acquire jurisdiction to decide the title to said stock, and I aver that, however this may be, that this court had complete jurisdiction of the aforesaid Gas-Light Company, and could and did by its decree enjoin said company from permitting any transfer of the shares of stock standing upon its books in the name of Joseph K. Brick, except as prescribed in said decree, and did make said injunction perpetual.

6. I believe it is true that the pretended last will and testament of my brother, Joseph K. Brick, has been admitted to probate in the surrogate's court of Kings County, in New York, upon the decision of the surrogate, adverse to a caveat filed by me against said probate,
56 from which decision I have prayed an appeal, which appeal is now pending undecided in the supreme court, New York. I do not know whether, since the probate of said will, the said plaintiffs have required the said Washington Gas Light Company to pay to them the accumulated dividend due and unpaid upon the said stock, and to permit the transfer to the said plaintiffs, or by said plaintiffs to some one to be by them designated, or whether the said company has refused to pay such dividends or to allow such transfer to be made, and has done so for the reason alleged in the said bill of complaint; but I do know that if the said company has refused to pay over such dividends and to allow such transfer to be made, it has acted in strict accordance with what is just and proper under the circumstances, and in proper regard for and preservation of my rights as the owner of the aforesaid shares of its stock; and having fully answered, &c., &c.

SAM. R. BRICK.

I do solemnly affirm that I have read the said answer by me subscribed, and know the contents thereof; and that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

SAM. R. BRICK.

Subscribed and affirmed to before me this first day of May, 1874.

W'M S. BAILY,
*Notary Public.*

*Exhibit A to answer.*

Defendant's Exhibit A.

COUNTY OF KINGS,
*City of Brooklyn, ss:*

Joseph K. Brick, being duly sworn, deposes and says, that his
57 business is that of a fire-brick manufacturer; that his place of business is at Van Dyke street; that his residence is at Lafayette, cor. Vanderbilt ave., in the 20th ward.

| | |
|---|---|
| That the amount of personal property held by him, after deducting his just debts and liabilities, exclusive of stocks of incorporated companies in this State, does not exceed the sum of ..... | $1.00. |
| That the amount of stocks and bonds held by him, of other States or incorporated companies out of this State, does not exceed the sum of..... | $5,000 of the Washington Gas-Light Co. bonds, D. C. Stock. Ret'ned as a loan. |
| That the amount of personal property held by him, as administrator for does not exceed the sum of ..... | $ |
| That the amount of personal property held by him as executor for does not exceed the sum of ..... | $ |
| That the amount of personal property held by him in trust for does not exceed the sum of..... | $ |

That he has no personal property of any description in his possession not included in the above statement.

(Signed) J. K. BRICK.

Sworn to before me this 3d day of July, 1865.

(Signed) JOHN DOHERTY,
*Commissioner of Deeds.*

I certify that this is a true copy of the original on file in the office of board of assessors.

HENRY C. RIPLY,
*President Board Assessors.*

58 *Exhibit B to answer.*

Defendant's Exhibit B.

KINGS COUNTY,
*City of Brooklyn, ss:*

Joseph K. Brick, being duly sworn, says:

That in the month of July, 1865, he made a statement of his personal property to the board of assessors of said city, and therein stated that the amount of personal property held by him of any kind whatever over and above his just debts and liabilities at that time did not exceed the sum of $1.00. Deponent further says, that he was erroneously assessed in the said year to the amount of $5,000, and that the said error arose from deponent having inserted in said statement $5,000 stocks held by him for his brother; and further that deponent had no pecuniary interest in said $5,000; and makes this affidavit with a view to have said error corrected.

(Signed) J. K. BRICK.

Sworn to before me this 5th day of May, 1866.

(Signed) JOHN DOHERTY,
*Commissioner of Deeds.*

I certify that the above is a true copy of the original on file in the office of the board of assessors.

HENRY E. RIPLY,
*President Board of Assessors.*

*Answer of Washington Gas Light Co.—Filed May* 5, 1874.

In supreme court, District of Columbia, the day of May, 1874.

JULIA E. BRICK, EDWARD D. WHITE, AND James How, executors of Joseph K. Brick, *v.* SAMUEL R. BRICK AND THE WASHINGTON Gas-Light Co. } No. 3625. Equity doc. 13.

59 To the honorable the judges of the supreme court of the District of Columbia, sitting in equity.

The separate answer of the Washington Gas-Light Company respectfully represents:

1. The said respondent believes it to be true that the plaintiffs reside in the city of Brooklyn, in the State of New York, and that letters testamentary on the last will and testament of Joseph K. Brick, late of the said city of Brooklyn, were issued to them by the surrogate of Kings County, in the State of New York, as is alleged.

2. That it is true that the defendant, Samuel R. Brick, is a citizen of the United States, residing in Philadelphia, in the State of New York, and this respondent is a corporation in the city of Washington, in the District of Columbia, chartered by the Congress of the United States.

3. Respondent is not advised by whom the purchase of the shares of stock in the bill of plaintiff, mentioned, was made, or what was paid therefor, but that it is true, as is alleged, that on the 6th day of October, 1864, the certificate filed as Exhibit B with said bill of complaint was issued by this respondent, but respondent is not advised as to the other matters contained in the third paragraph of said bill, and can make no response thereto.

4. That respondent knows nothing touching the allegations contained in the fourth paragraph of complainant's bill of complaint, and can neither admit or deny the same, excepting so far as it is alleged that said Samuel R. Brick stated to the officers of the respondent that the said stock, though appearing upon respondent's books in the name of Joseph K. Brick, was in point of fact held for and on account of him, said Samuel R. Brick, and this allegation respondent believes to be true.

60 5. That as to the allegation contained in the fifth paragraph of said bill respondent knows nothing, except that proceedings were instituted in this court as is alleged, and a decree made therein, by which this respondent was enjoined and restrained from doing certain acts and things with respect to said stock; that said respondent being advised that it was its duty to obey said decree, has obeyed and will continue to obey the same until further ordered by the court.

6. Respondent further answering, says that it is true that it has refused to pay over the accrued dividends upon the said stock to plaintiffs, or to permit said plaintiffs to make any transfer of the said shares of stock; and that it is further true that it has done so in obedience to the decree of this court, in terms restraining and enjoining them from doing the very acts specified, and because it is advised that it is its duty strictly to obey said decree.

And having fully answered said bill of complaint, or so much and such parts thereof as it is advised it is material for it to answer, prays to be hence dismissed with its reasonable cost, and so as in duty bound will ever pray, &c.

B. H. BARTOL,
*Pres't Washington Gas-Light Co.*

Witness:
A. B. KELLY.

I, B. H. Bartol, do hereby swear that I am president of the said Washington Gas-Light Company; that I have read the answer by me subscribed, and know its contents, and that the matters and things therein stated as of my own knowledge are true, and those stated on information and belief I believe to be true.

B. H. BARTOL,
*Pres't Washington Gas-Light Co.*

Witness:
A. B. KELLY.

61 Subscribed and sworn to before me, a notary public in and for the county of Washington, this fifth day of May, A. D. 1874.

A. B. KELLY,
*Notary Public.*

*Replication.—Filed May* 14, 1874.

In supreme court District of Columbia.

JULIA E. BRICK ET AL.
*vs.*
SAMUEL R. BRICK ET AL. } No. . Eq. docket, No. 18.

The complainants joins issue with the defendants, who have severally filed their answers in said cause.

JOS. H. BRADLEY,
*Solicitor for Plaintiffs.*

14TH MAY, 1874.

*Agreement to take testimony.*

In the supreme court, District of Columbia. In equity.

JULIA E. BRICK ET AL.
*vs.*
SAMUEL R. BRICK ET AL. } No. . Eq. docket, No. .

In this cause it is hereby stipulated and agreed, by and between the parties respectively thereto, that depositions may be taken by both or either of said parties, before C. D. Winslow, one of the commissioners of the circuit court of the United States for the southern district of New York; also at Philadelphia in the State of Pennsylvania, and before Henry W. Garnett, esq., one of the examiners in chancery of this
62 honorable court, of the city of Washington, at the taking of which depositions respectively the said parties by their respective attorneys will appear and examine and cross-examine such witnesses as may be produced by either of said parties respectively; the said depositions when so taken to have the same effect, and none other, as if taken under the order of this honorable court.

JOS. H. BRADLEY, S'R,
*Sol'r for Complainants.*
W. B. WEBB,
*Sol'r for Defendant.*

10 JUNE, 1874.

In the matter of Julia E. Brick and others vs. Samuel R. Brick and others, in the supreme court of the District of Columbia, now pending, it is agreed by and between the solicitors of both parties that no further testimony will be taken until after the first day of October, next, and then only in conformity to the agreement heretofore made and filed in said cause.

JOS. H. BRADLEY,
*Sol'r for Complainants.*
W. B. WEBB,
*For S. R. Brick.*

UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania, ss:*

Be it remembered, that on the eleventh and fifteenth days of June, A. D. 1874, personally appeared at my office, 113 South Fifth street, in the city of Philadelphia, before me, Craig Biddle, a commissioner appointed by the circuit of the United States, in and for the eastern
63 district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgements of bail, &c., William Bucknell, Henry L. Gaw, William R. Howell, Moses W. Woodward, and Samuel R. Brick, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now pending and undetermined in the supreme court of the District of Columbia, in equity, No. 3625, wherein Julia E. Brick, Edward D. White, and James How, executors of Joseph K. Brick, are the complainants, and Samuel R. Brick and the Washington Gas-Light Company the respondents. And the said witnesses being of lawful age and having been by me first cautioned and sworn or affirmed to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

WILLIAM BUCKNELL affirmed.

I know Samuel R. Brick; have known him for thirty years or more; have had business transactions with him. I have owned since 1862 Washington Gas-Light Company stock; own none of it now. On the 12th of September, 1864, I owned one thousand or twelve hundred shares of it; on that day I sold three hundred and ninety-two shares at $20 a share. I produce the original bill of sale of it (Exhibit A). This note (Exhibit B) was given by M'r Brick in payment for the balance, ten per cent. being paid in cash. This note was paid at maturity. I sold also to Gaw and Macalester five hundred shares at the same price; don't remember the date, nor who the purchase was on account of.

The stock was on the stock board at Philadelphia. I sold because there was some dispute between Congress and the company.

WILLIAM BUCKNELL.

64 HENRY L. GAW sworn.

I am a stock broker of the firm of H. L. Gaw & Co.; in 1864, the firm was Gaw, Macalester & Co.

I purchased on the 26th of September, 1864, five hundred shares of the Washington Gas Light Company from M'r Bucknell, at $20 a share, on account of M'r Samuel R. Brick. This is the check given us in payment by M'r Brick for amount of stock, and twelve and one-half cents a share commission (Exhibit C). I think I was a director of the company at the time. The fair market value of the stock was what it sold for, $20. The works were rebuilt by M'r Brick before this time, or rather the new works were built.

Cross-examined by M'r Bradley:

I think George W. Riggs was president of the company in 1864; M'r Barnabas Bartol succeeded him. I don't remember the date of his election. M'r Samuel R. Brick built the new works. He had a contract to finish them complete. This included the retorts. Can't say whether M'r Brick was employed by the company in 1864. I did not know M'r Joseph K. Brick in his lifetime. I don't know whether or not he was a stockholder while I was a director.

H. L. GAW.

WILLIAM R. HOWELL affirmed.

In 1864 I was the bookkeeper of Gaw, Macalester & Co. I was examined once before in this matter. The books show a purchase by the firm of five hundred shares of Washington Gas-Light Company stock on account of Samuel R. Brick, for twenty dollars a share.

| | |
|---|---|
| The price of the stock was | $10,062 50 |
| The commission being | 62 50 |

65 I am now reading from the book of original entry. We enter from this directly into the journal.

In the journal I find this entry:

SEPTEMBER 27TH, 1864.

*Samuel R. Brick to William Bucknell.*

| | |
|---|---|
| For five hundred shares Washington Gas, at $20 | $10,000 |
| Commission | $62 50 |

This was the day after the purchase, which was made on the 26th. A memorandum on this book shows that M'r Brick paid for it on the 28th.

Cross-examined by M'r Bradley:

I remember M'r Brick coming and paying for the stock. I don't remember whether it was paid by a check or in cash. I had no participation in the transaction, except to enter it on the books. The original entry was made by one of the clerks in the office.

Re-examined by M'r Dennis:

The clerk behind the counter received the order from whoever made the sale, and then entered it. (Witness shown Exhibit C.) I recognize the signature of Sam'l R. Brick and the endorsement of the firm.

W. R. HOWELL.

MOSES W. WOODWARD affirmed:

I am a resident of Philadelphia. I am cashier of the Manufacturers' National Bank; have been connected with banks—the same bank—since 1835.

Q. What is the custom of the banks in this city when they loan money on stocks, as to their collateral security?

(Objected to by M'r Bradley.)

A. The general custom is to transfer the stock to the party loaning the money.

66 Q. Can you assign any reason why this course is adopted by loaners?

(Objected to by M'r Bradley.)

A. For fear of judgment or attachment, they take the title.

Cross-examined by M'r Bradley:

Not waiving the objections already made.

I speak for several banks, as the custom of several banks—for the Philadelphia and Commercial Banks, and I think it general.

M. W. WOODWARD.

SAMUEL R. BRICK affirmed:

I built the new works of the Washington Gas-Light Company in 1858 and 1859, finishing in the close of the year 1859—I think, December. They are situated at 26th and G streets. The capital of the Gas-Light Company when I commenced was five hundred thousand dollars. The original organization was in 1848. They increased their capital to 1855, from time to time, and in 1864 it was five hundred thousand dollars. It was then proposed—in 1864–5–6, to apply to Congress to increase the capital stock to one million of dollars. On May 24th, 1866, Congress passed a law increasing it five hundred thousand dollars. I knew in 1864 of the purpose of the company to apply for an increase of capital stock. I became a stockholder early in September, 1864. I bought eight hundred and ninety-two shares directly from William Bucknell—three ninety-two—and five hundred through my brokers, Gaw, Macalester & Bacon. I paid for all of that stock.

Q. Did you put out that stock as collateral security for any money loaned you?

(Objected to by M'r Bradley.)

67 A. I did, to my brother, Joseph K. Brick, of Brooklyn. I put out two hundred and fifty shares, and received an advance of fifty-two hundred and fifty dollars.

(The foregoing answer objected to by M'r Bradley as irrelevant, immaterial, and against the act of Congress.)

Q. In whose name did that collateral stand?

(Objected to as above.)

A. It stood in the name, on the books of the company, of Joseph K. Brick. I had it so placed.

(Answer objected to as above.)

Q. Did Joseph K. Brick, in his lifetime, ever demand payment of this loan?

(Objected to by M'r Bradley.)

A. He did, on several occasions, when he wanted money badly.

Q. Did you ever, in the lifetime of Joseph K. Brick, offer to repay this loan?

(Objected to by M'r Bradley.)

A. I did on several occasions orally, and once I wrote to him. This is the letter. (Exhibit D.)

(M'r Bradley objected to the oral conversations, not to the letter.)

Q. State whether or not Joseph K. Brick sent any message by you, oral or written, to the Washington Gas-Light Company.

(M'r Bradley objected to any oral messages, and asks that the written ones be produced.)

A. Yes; he both orrally and by letter. The letter was filed among the exhibits at Washington, in the first case. The oral message was that I should inform the officers of the gas-light company that although the stock stood in his name on the books of the company, in reality it was my property.

Q. When did you first learn that the estate of Joseph K. Brick claimed these shares of stock as belonging to him?

68 (Objected to by M'r Bradley.)

A. After the first of February, 1869.

Q. State whether or not, after you heard of this claim, you made any application to the executors of Joseph K. Brick to transfer to you this stock.

A. I did. I offered to pay them principal and interest on the loan, and that I would take a transfer of the stock. This is a letter from the attorney of the collectors of the estate and the sole devisee. (Exhibit E.)

(Letter objected to as not responsive to question.)

Q. State whether the executors were appointed at that time.

A. There were no executors, the will not having been proved; but I applied to the persons representing the estate.

Q. What effect would doubling the capital have, or rather what effect did it have on the value of the stock?

A. It would double the value of the stock, giving two shares for one, as this was a surplus already earned and only waiting for authority to divide.

Cross-examined by M'r Bradley:

I ordered the two hundred and fifty shares transferred to my brother. It stood in William Bucknell's name previous to the transfer. All the stock I purchased from William Bucknell was not transferred at the same time; one parcel was in limbo under bonds. M'r Bucknell held one lot as collateral security. That was the first purchase. I don't remember when it was transferred to me; after my note became due, I think. Two hundred and fifty shares of the next purchase was transferred to me, and two hundred and fifty to my brother at the same time,

I think. I paid cash down for this last purchase by check. I don't recollect whether I had written to my brother to purchase that stock. I may have written to him about the purchase of gas stock generally.

69 Re-examined by M'r Dennis:

I do not know what became of the exhibits filed in the first case, among which I suppose was the letter of my brother containing a message to the gas company. I have produced here all the exhibits filed by me that I have, and which were filed in the case referred to by me in my testimony-in-chief.

Q. Did you or not receive a letter from your brother dated the 12th of September, 1864, and file the same as an exhibit in that cause?

(Objected to by M'r Dennis.)

A. Not having the letter before me for recognition, it is taxing my memory too much to give a yes or no answer.

(Paper purporting to be a copy produced.)

Q. Look at that paper and see if it refreshes your memory.

A. I wrote to my brother to raise me money by loan. I don't remember to have seen this copy before.

The exhibits produced here were sent to me by M'r Webb. I received from my brother but one letter; that I remember sending a message to the Gas Company; that it was my stock, and not his, which stood in his name.

M'r Bradley gives notice to defendant, Samuel R. Brick, to produce before the commissioner at Washington to-morrow the letter from Joseph K. Brick, of September 12th, 1864, addressed to the defendant, Samuel R. Brick, at the city of Washington.

SAMUEL R. BRICK.

70 EXHIBIT A, C. B.

[Stamp.]

PHILADELPHIA, *Sept.* 7, 1864.

Sold Samuel R. Brick:

| | |
|---|---|
| 392 shares Washington gas stock, at $20 per share..... | $7,840 00 |
| Credit by cash on acc't..... | 784 00 |
| | $7,056 00 |
| Note and interest, 90 days, to be transferred and left, with power of attorney, with note..... | 108 50 |
| | $7,164 50 |

W'M BUCKNELL.

Bucknell holds 392 shares as collateral security.

EXHIBIT B, C. B.

[Stamp.]

$7,164.50.] PHILADELPHIA, *Sept.* 7, 1864.

Ninety days after date I promise to pay to the order of W'm Bucknell seventy-one hundred and sixty-four $\frac{50}{100}$ dollars, without defalcation, value received.

Deposited 392 shares of Washington Gas-Light Co. stock as collateral. Due December 6 & 9.

SAMUEL R. BRICK.

(Endorsed:) W'm Bucknell.

EXHIBIT C, C. B.

No. 7558.] PHILADELPHIA, *Sept. 26th*, 1864.

Manufacturers' & Mechanics' Bank pay to the order of Gaw & Macalister ten thousand sixty-two $\frac{50}{100}$ dollars—$10,062 $\frac{50}{100}$.

SAMUEL R. BRICK.

(Endorsed:) For deposit to credit of Gaw, Macalester & Co.

71 EXHIBIT D, C. B.

PHILADELPHIA, *May 7th*, 1866.

DEAR BROTHER: Your letter at hand; all parts noted; due regard to the stock; you say it pays nothing; you mistake. If you have not received a dividend it is certainly strange; I got one on February 17, $100 per share, or 5 per cent. I saw your check for $250 dollars; however, if you have not received it, send me your order to receive it for you at once, and I will forward it to you, or if you don't wish to keep the stock I will try and raise the money and take it off of your hands. If you so conclude advise me at once that I may have a little time to raise the money. Alfred and Joe. can take some of it if they will sell their 5.20 bonds.

Or, I will do this: I will take the stock, allow you 7 per cent. interest from the time you gave your check, deducting the dividend February 1st, that is, if you have received the same, if not, you give me your order to receive it in your place, as per your attorney, then I will stand thus: 19 months' interest, at 7 per cent., $581.12; stock, $5,250; total stock and interest, less the $250 dividend, $5,581 $\frac{12}{100}$, or, with the February interest, $5,831 $\frac{12}{100}$. You will observe I have calculated the interest upon the whole amount, $5,250.00.

There has not been any sales of stock for some time, and no bids that I know of. I called at my brokers to-day; he said, "I can sell it readily," but did not name a price, as it is seldom in the market. I did hear Riggs, the banker in Washington, bought 210 shares at $22.00 per share. I think it is worth much more than that, particularly should we get our bill through for the increase of capital, but Congress, as you know, is uncertain. I will give them notice at Washington, as you
72 desire, that the stock is mine, but held by you or in your name. If you conclude to take my offer, state how many days before you want the money. If I conclude to keep the stock I will have to sell some others. I may, however, (that is, if you let me have it upon the terms stated above), raise the money for a short time, and sell out in lots and thereby make a few dollars; I want to place it to suit myself. I go to Wilmington to-morrow with drawing and specifications to extend their works; we shall want 20 retorts, clay, 4 benches of 5 each, with everything new. I have laid the work out.

S. R. BRICK.

EXHIBIT E, C. B.

No. 16 COURT STREET,
*Brooklyn, June* 3, 1869.

Hon. NOAH DAVIS:

DEAR SIR: We have just received yours dated June 2d. We have referred the matter to our clients, who are seeking more light about the facts, and we are still doubtful whether, under any circumstances, they

have the right to decide upon the matter. We shall probably see each other on the 9th inst., when we can let you know if we have come to any conclusion.

Yours truly,

R. & W'M M. INGRAHAM.

UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania:*

I, Craig Biddle, a commissioner appointed by the circuit court in and for the eastern district of Pennsylvania, in the third circuit, under and by virtue of the act of Congress, do hereby certify that the reason for taking the foregoing depositions, and the fact is, that the witnesses reside more than one hundred miles from the city of Washington,
73 District of Columbia, where the said cause is appointed to be tried, to wit, in the city of Philadelphia, in the State of Pennsylvania.

I further certify that on the 11th and 15th days of June, A. D. 1875, I was attended by Joseph H. Bradley, esq., of counsel with plaintiffs, and W. L. Dennis, esq., of counsel with the said defendants, and by the witnesses, who were of sound mind and lawful age; and the witnesses having been by me carefully examined and cautioned and sworn or affirmed to testify to the whole truth, the deposition was by me reduced to writing in the presence of the witnesses who subscribed the same in my presence, and I have retained the said depositions in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of said cause.

In testimony whereof I have subscribed my name and affixed my seal this eighteenth day of June, A. D. 1874.

[SEAL.]

CRAIG BIDDLE,
*U. S. Commissioner.*

UNITED STATES OF AMERICA,
*Eastern District of New York, ss:*

Be it remembered that on this twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-four, I, D. C. Winslow, a commissioner duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled
74 "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did personally appear before me, at my office, at No. 110 Montague street, in the city of Brooklyn, in the said eastern district of New York, in the State of New York, Edward D. White, Julia E. Brick, to testify and the truth to say, on the part and behalf of the plaintiffs, and Burr Wakeman and Minthorne Tompkins, to testify and the truth to say, on the part and behalf of the defendants in a certain suit or matter of controversy, now depending and undetermined in the supreme court of the District of Columbia, wherein Julia E. Brick et al. are plaintiffs, and

Samuel R. Brick et al. are defendants; and the said Edward D. White being about the age of fifty-two years, and said Burr Wakeman being about the age of seventy-eight years, and the said Julia E. Brick being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward D. White, and he did thereupon depose, testify, and say as follows, viz:

In supreme court, District of Columbia.

Folio 1.

JULIA E. BRICK ET AL.
*vs.*
SAMUEL R. BRICK ET AL., DEFENDANTS.

75 At No. 170 Montague street, in the city Brooklyn, county of Kings, in said district, on the 12th day of June, A. D. 1874, before M'r David C. Winslow, U. S. commissioner.

The plaintiffs appear by Joseph H. Bradley, s'r, and the defendants by C. Minor and D. R. Jaques.

Edward D. White, sworn and examined as a witness on behalf of the plaintiffs, says:

My name is Edward D. White; age, fifty-two years; and occupation, manufacturer; and residence, 362 Bridge street, Brooklyn, N. Y. I know the parties to this suit, and am one of the plaintiffs. I knew Joseph K. Brick from the year 1849 up to the time of his death in August 7th, 1867. Have known Samuel R. Brick for ten years; have seen Joseph K. Brick write repeatedly, as well as Samuel R. Brick. Have received communications in writing from him which I have acted upon —can identify their handwriting; letter Ex. 1, D. C. W., and Ex. 1A, D. C. W., shown witness; also letter Ex. 2, D. C. W., and envelope Ex. 2A, D. C. W.; also so much of Ex. 3, D. C. W., as is written in red ink, together with the date, as follows: "Brother Joe: You scolded me at one time pretty hard about that Washington gas-stock. Now what will you take for it, clean out? Let me know." Dated "Phil., Dec. 16th, '66." Envelope Ex. 4, D. C. W., offered in evidence.

It is here stipulated that copies of all documentary evidence of which the originals are produced are to be received instead of the originals.

Check-book on Atlantic Bank shown witness.

I have never had the check-book in my possession; think it is the check-book of Joseph K. Brick; I know it was in M'r Jos. K. Brick's possession during his life-time. Witness looks at the stub of check-book, and states that it is in the handwriting of Joseph K. Brick; witness
76 reads writing on the stub of the check-book as follows: "Washington gas-light stock, September 29th, 1864, (250 shares) at $21 per share, (par 20) $5,250."

Check produced and marked Ex. 5, D. C. W., and shown witness, and he is asked in whose handwriting it is—and says it is in the handwriting of Joseph K. Brick. Witness looks on back, and is asked in whose handwriting the endorsement is, and says that the first endorsement is in the handwriting of Samuel R. Brick.

Original certificate of stock, marked Ex. 6, D. C. W., offered in evidence.

(Witness, being cross-examined, says:)

(Cross-examination waived.)

Witness says, that the exhibits produced and marked Ex. 1A, Ex. 2, and Ex. 2A, and Ex. 3 in red ink, and Ex. 4 are in the handwriting of Samuel R. Brick.

EDWARD D. WHITE.

Sworn to before me this 12th day of June, 1874.
[SEAL.] D. C. WINSLOW,
*U. S. Com'r.*

And the said M'rs JULIA E. BRICK, being sworn as a witness for the plaintiff and examined, says:

My name is Julia E. Brick, and I am one of the parties to this suit. I was the wife of Joseph K. Brick.

(The defendants desire that the questions shall be put in writing.)

Q. Were you present, or did you hear a conversation between M'r Joseph K. Brick and Samuel R. Brick, in the fall of 1864, in relation to the purchase of certain stock by the said Joseph K. Brick in the Washington Gas-Light Co.?

77 (Objected to by counsel for defendants, on the ground that it is preliminary to a call for testimony of a statement by the witness, she being a party to the action, of a statement or communication of decedent testator of whose estate she is executrix—and on the ground of incompetency and irrelevancy.)

Q. Please to state all that was said in that conversation.

(Objected to by defendants' counsel on the ground that it directly calls for a statement or statements made by Joseph K. Brick, the testator, in an action by his executors, and is incompetent and irrelevant.)

A. I recollect Samuel Brick coming to the house and asking Joseph if he would not buy some Washington Gas-Light Stock that was to be sold. He replied no, that he would not buy it, that he hadn't the money; Samuel wanted his proxy to vote on. That was all that passed at this conversation that I recollect.

Q. Do you recollect any conversation between them on the same subject subsequent to the one you have spoken of during the same fall?

(Same objection, and that it is incompetent under the act of Congress, March 3, 1865, ch. 113, 2d session, sec. 1st.)

A. I recollect Samuel asking him again, and Samuel said he hadn't money to buy or he would get it, but if Joseph would take it he would pay him for it afterwards. When Samuel went to go away, Samuel said be sure to sign the check and send the check to me—to write the check in his (Samuel's) name.

Q. Do you know, in point of fact, whether your husband did or not purchase any of that stock that fall?

(Objected to by defendants' counsel on the ground that if it calls for knowledge derived from the testator's statement it is inadmissable for the reason of the last objection under the act of Congress pro-

78 hibiting transactions or statements made by testators being testified to, and on the ground that if it calls for knowledge derived from documentary evidence, it is secondary.)

A. I merely know by hearing of it, and knowing that the stock was in his possession.

(Motion made by defendants' counsel to strike answer out as incompetent and irrelevant.)

(Original certificate of stock marked Ex. 6, D. C. W., shown witness.)

Q. Please to state whether you ever saw that paper before.

A. I think I have.

Q. Have you any knowledge of any facts tending to show an offer on the part of the defendant, Samuel R. Brick, to purchase the said stock from Joseph K. Brick? And if so, please to state all that you know on that subject.

(Objected to by defendants' counsel: 1st, as leading; 2d, calling for an opinion; and 3d, as incompetent, as calling for transactions and statements, or either of them, by the testator, from the witness, who is party plaintiff, is executrix, as incompetent and irrelevant. Question modified and waived for the present.)

(Exhibits 1, D. C. W., and 2, D. C. W., and 3, D. C. W., shown witness.)

Q. Have you ever seen those letters before?

A. I think I have.

Q. In whose possession?

(Objected to, same grounds as last.)

A. I saw them in my husband's possession, and found them among his papers after his death, and gave them to my attorney, M'r Ingraham.

Q. How soon after the dates of the letters, respectively, did you see them in your husband's possession?

79 (Objected to by defendants' counsel on same grounds as were detailed in the objection last above.)

A. I saw them when he first read them; he read them aloud—one at least. I remember Ex. 1, D. C. W., dated May 7, 1866, particularly. I saw it at the time he read it aloud.

(Defendants' counsel objects to the latter part of the statement as to his having read it.)

I don't remember the others, except as I gathered them up after his death.

Q. Have you any knowledge or not? and, if you have, state as to whether he accepted either of the offers in the letter of the 7th of May, or rejected them, and what he said or did on that subject.

(Objected to by defendants' counsel as calling for a transaction with and statement of the testator from the witness, who is executrix and party plaintiff, as incompetent and irrelevant, and contrary to the statute in such cases made and provided.)

A. I heard him say that he would keep it, that he was able to then, and that he did not wish to sell it. Heard him say so to several parties, I think.

(Motion made by defendants' counsel to strike out answer as not responsive and as incompetent.)

(Cross-examination waived.)

JULIA E. BRICK.

Subscribed and sworn to this 12th day of June, 1874, before me.

D. C. WINSLOW,
*U. S. Com'r.*

And the said BURR WAKEMAN, a witness called on behalf of the defendants, being sworn and examined, says:

80 I reside in New York City, No. 19 West 36th street; I am president of Harlem Gas-Light Company; I know Joseph K. Brick and Samuel R. Brick; I am 78 years old; I knew Joseph K. Brick from

1856 till his death; I knew Samuel R. Brick within about a year after I became acquainted with Joseph K. Brick. They were brothers.

Q. Will you state what you know as to the ownership of 250 shares of the stock of the Washington Gas-Light Company standing in the name of Joseph K. Brick?

A. In 1865 or 1866, Joseph K. Brick's health became quite impaired, and he called upon me, stating that he wanted money; to know if I would buy 250 shares of Washington gas-light stock. He expressed a wish to sell it I answered him that I had not the money, but that I would look about for a day or two, and if I could get the money I would buy it or make him an offer for it. This was the latter part of the week. He wanted me to let him know early in the following week whether I could raise the money and what I would give him for it, and he would call and see me. He did call upon me early in the week, and I made him a cash offer for the stock of either $23 or 23½ per share. I speak from recollection. He replied that the price was about what he expected; but that he either could not or would not sell without writing to Samuel to get his consent. I told him I thought it was rather trifling. My impression is that I conversed several times with Joseph K. Brick about this stock; but it is too long a time to remember. I have no recollection of his speaking particularly as to the ownership of the stock.

Q. From what Joseph said on these several occasions as to the stock, what is your best recollection of what he stated as to the ownership?

(Objected to by plaintiff's counsel. 1st. He has said that he
81 does not remember having conversed with Joseph as to the ownership of stock. It assumes conversations which the witness says have not occurred and is incompetent.)

A. It is so long ago it is difficult for me to remember.

Q. What is your best recollection of what Joseph K. Brick said to you, or in your presence, and that of Samuel R. Brick, in relation to the ownership of this stock?

(Objected to by plaintiffs' counsel that the question assumes that there has been conversations between the two brothers, in his presence, of which there is no evidence.)

Question modified—in the presence of Samuel, if he was present at such conversations?

A. It is impossible for me to remember, it is so long ago. I supposed that I understood the whole transaction, and that there was no difference between the two brothers.

(The last clause of the answer objected to by plaintiff's counsel as inadmissable and incompetent and not responsive to the question.)

Q. Did you, at the time of the conversations testified to by you, suppose that you understood the transaction from what was said by Joseph K. Brick?

(Objected to by plaintiff's counsel as inadmissable. We are inquiring for the witness' knowledge, and not his understanding; that he has already sworn that he cannot recollect how he secured that understanding.)

A. I certainly did suppose from what he said, and from what his brother said, that I understood the transaction fully.

Q. State how at the time you understood the transaction from what was said at these conversations with Joseph K. Brick.

82 (Objected to by plaintiff's counsel.

We want what Joseph K. Brick said, and not the understanding

of witness, especially as he had said that he cannot recollect what Joseph K. Brick said, and the question is irrelevant.)

A. I can't answer that question, as before stated; I cannot separate what Joseph told me and what Samuel told me. I cannot tell from which I heard it.

Q. Can you state from what was said by Joseph K. Brick, or by Samuel R. Brick in Joseph's presence, without attempting to discriminate in your memory what was said by either?

A. I cannot.

Cross-examined:

My impression is that my conversation with Joseph about the sale of this stock was in April or May, I think, 1866. There was more of the stock in the market at that time; there were purchases made at that time, I think. I offered the fair market value. I was a stockholder in the company at that time. I think M'r Bartol was president at that time. I was not a director at that time. Some time after that there was an increase of stock.

BURR WAKEMAN.

Subscribed and sworn to this 12th day of June, 1874, before me.

D. C. WINSLOW,
*U. S. Commissioner.*

It is now stipulated that the copy of certificate of stock, Exhibit 6, D. C. W., be substituted. It is stipulated by the parties that the defendants have leave at any time before the return of this testimony
83 to file with the commissioner a certified copy of the affidavit filed in May, 1866, in the assessor's office, Brooklyn, of Joseph K. Brick, swearing off the assessment upon the gas-stock in question.

The above affidavit being already in evidence the stipulation is withdrawn.

It is admitted that in June, 1869, M'r Samuel R. Brick made an offer to take up the gas stock in question, by paying to the collector of the estate of Joseph K. Brick the cost of the stock and interest, deducting the dividends received by Joseph K. Brick.

Exhibit 7, D. C. W., offered in evidence on the part of the defendants with the same effect as if the deponent, Minthorne Tompkins, was placed upon the stand as a witness, and should testify to the facts therein contained, reserving all questions as to the admissibility of the evidence only. The defendant now put in evidence the letter Exhibit 3, D. C. W., not already in evidence.

EXHIBIT 1., D. C. W.

PHILADELPHIA, *May 7th*, 1866.

DEAR BROTHER: Your letter at hand; all parts noted; due regard to the stock; you say it pays nothing; you mistake. If you have not received a dividend it is certainly strange; I got one on February 17, $100 per share, or 5 per cent. I saw your check for $250 *dollars*; however, if you have not received it, send me your order to receive it for you at once, and I will forward it to you, or if you don't wish to keep the stock, I will try and raise the money and take it off of your hands. If you so conclude, advise me at once, that I may have a little time to raise the money. Alfred and Joe can take some of it if they will sell their 5-20 bonds.

84 Or I will do this: I will take the stock, allow you 7 per cent.

interest from the time you gave your check, deducting the dividend February 1st, that is, if you have received the same; if not, you give me your order to receive it in your place, as per your attorney. Then I will stand thus—19 months' interest at 7 per cent., $581.12; stock, $5,250; total stock and interest, less the $250 dividend, $5,581.12, or with the February interest, $5,831.12. You will observe I have calculated the interest upon the whole amount, $5,250.00.

There has not been any sales of stock for some time, and no bids that I know of. I called at my brokers to-day; he said, I can sell it readily, but did not name a price, as it is seldom in the market. I did hear Riggs, the banker in Washington, bought 210 shares at $22.00 per share. I think it is worth much more than that, particularly should we get our bill through for the increase of capital, but Congress, as you know, is uncertain. I will give them notice at Washington, as you desire, that the stock is mine, but held by you or in your name. If you conclude to take my offer, state how many days before you want the money; if I conclude to keep the stock I will have to sell some others; I may, however (that is, if you let me have it upon the terms stated above) raise the money for a short time, and sell out in lots, and thereby make a few dollars; I want to place it to suit myself. I go to Wilmington to-morrow with drawing and specifications to extend their works; we shall want 20 retorts; clay, 4 benches of 5 each, with everything new; I have laid the work out.

S. R. BRICK.

85 EXHIBIT 1 A, D. C. W.

[Stamp.] [Phil'a, May 8, 1866, Pa.]

JOSEPH K. BRICK, Esq.,
Care J. K. Brick & Co.,
BROOKLYN,
N. Y.

Private.

(Written on the back;) Private. P. C. SEAL.

EXHIBIT 2, D. C. W.

SUNDAY, 13*th May*.

DEAR BROTHER: You wrote me the other day in a great hurry about your stock, and I answered at once; since which time I have not heard from you, whether it met with your approbation or not; you will let me know, as I don't wish to keep parties waiting. I have the Wilmington extension.

Your brother,

SAMUEL.

EXHIBIT 2, D. C. W.

JOSEPH K. BRICK,
Care J. K. B. & Co.,
BROOKLYN,
N. Y.

(Written on the back:) Private.

EXHIBIT 3, D. C. W.

PHILADELPHIA, *December* 16, 1866.

DEAR BROTHER: It does seem to me that you have forgotten that you have a brother Samuel. I have written you several times,
86 but no reply; at one time you were too sick to write, but I now hear your health has not been better for some years, for which you should be thankful; certainly I do feel thankful, and I am free to say that if you will only desist working with yourself for every little fiddle-faddle, you would never have suffered as you have. There has been too much medicine used in your house. Well, my dear brother, I have a very sad house; my poor son Alfred, he's very low, perfectly helpless, so emaciated you would not know him; he has been confined to his room only about five or six weeks, but ailing for a year; we have Professor Grass; he gives us but little hopes; we cannot let Alfred know his real situation, as he would sink under it; therefore if you write be very careful what you write, should you do so. Hettie has worried herself in bed, and is quite sick, as well, also Emma and Tillie; in fact I am the only sound individual in the house; I am well, and measure 42 inches around the chest.

I received a day or two ago a letter from Bro. Jack's daughter, Mollie. It appears she is married, and, I judge, also, a little feeling somewhere. She writes for her mother's likeness, which I have; she wants to buy it, as her mother is dead; she died 25 last September, from cholera, so she writes, and there stops; she said nothing about her father, or any one else, more than to direct my letter to M'r's Cookly, to the care of you Brother John; let them rip; I can stand it as long as they can, anyhow.

Well, Joe, I presume you have heard of Uncle John's last bereavement; poor old man; left alone; you, myself, and children are all that is near and dear to him; that he admits; my heart bled for him the day of the funeral of Fannie; he threw his arms around Kitty's neck and wept like a child. Says he, "I am left alone; all gone, gone. You and
87 your children are all that is left." M'r's Rogers had a long talk with me, and stated that her and the other sisters have had to work and support uncle; that he, uncle, was destitute of even the necessaries of life. Of course, I don't know if it be true or false, but suffice it to say, he appears badly off for winter clothes, and what comforts I don't know.

Uncle wrote me a note the other day stating that he undertook to walk up from Gloucester and gave out half way up and was fearful that he would have to lay out on the road all night, but fortunately was discovered and taken home. Yesterday I met M'r's Rogers in the street. I enquired why uncle had not been over to spend a day or so with us. She answered because uncle had not the warmth of clothes to go out with this cold weather. Brother, I have a large and expensive family looking to me for support, yet I have offered our dear old uncle a home, but he prefers to remain with his wife's sisters. They also have the time to attend to his declining days. If I were situated as you are, thousands upon thousands more than you will ever know what to do with, as you have no one to whom you can leave it to, except to some chringing, truckling institution or church who will only quarrel about it and give you no credit or thanks after you have departed this life—I say, under all these circumstances, I would make his old heart glad by sending him a check, as a Christmas present, of $500 or more. You will never miss the amount, even were it $1,000, and I know you will feel much better to

know that you have made his heart glad in his old days. He cannot last much longer; he is now 80; the last words he said when I left him the day of the funeral—"Sammy, when I die will they take me to Salem and bury me under the large oak beside my father and mother?" Ob-
88 serve, he is quite childish. If you wish to send him anything you may send it to me and I will take it and deliver it into his own hand; then you will be sure he gets it all right. Let me hear from you soon. We all send our love to you both.

Your affectionate brother,

SAMUEL,
1911 *Arch Street.*

(Printed in red, on the margin:) Brother Joe, you scolded me at one time pretty hard about that Washington Gas Stock. Now what will you take for it, clean out? Let me know.

Merrick & Sons have fooled me so with my work at Wilmington, and got things so behind, I am fearful I will lose on my work, where I should have made $10,000 at least. My tank and building have been done and ready since August, and they can't get through for six or eight weeks yet. Only see what a fix they have got me in.

EXHIBIT 4, D. C. W.

[Stamp.]

[Phila. Dec. 17, Pa.]

JOSEPH K. BRICK,

BROOKLYN, N. Y.

EXHIBIT 5, D. C. W.

[2 c't int. rev. stamp, cancelled this Sept. 29, 1894.]

BROOKLYN, N. Y., *September* 29*th*, 1864.

Atlantic Bank pay to Samuel R. Brick or order fifty-two hundred and fifty dollars ($5,250).

J. K. BRICK.

89 EXHIBIT 6, D. C. W.

[25 c'ts U. S. rev. stamp.]

No. of certificate, 1311. No. of shares, 250.

WASHINGTON GAS-LIGHT COMPANY.

It is hereby certified that Joseph K. Brick is the owner of two hundred and fifty shares of the capital stock of the Washington Gas-Light Company, transferable only on the books of the company in person or by attorney on the delivery of this certificate.

Witness the seal of the said company, and the signatures of the president and secretary, at the city of Washington, D. C., the 5th day of October, A. D. 1864.

[SEAL.] GEO. W. RIGGS, *President.*
[SEAL.] J. F. BROWN, *Secretary.*

EXHIBIT 7, D. C. W.

In the Supreme Court of the United States.

SAMUEL R. BRICK
*vs.*
EDWARD D. WHITE ET AL. } No. 2260.

STATE OF NEW YORK,
*City of Brooklyn, ss:*

Minthorne Tompkins, being duly sworn, deposes and says that he accompanied Samuel R. Brick to the office of Edward D. White, one of the executors of the estate of Joseph K. Brick, for the purpose of making a tender to said executor of the sum of $7,039.53, on the 3d day of April, 1873, that being the amount with interest to April 3d, 1873, for the better securing the payment of which the certificate of stock of the Washington Gas-Light Company, the subject of the above-entitled actions, were deposited; that said Samuel R. Brick made tender
90 of the above amount in legal-tender notes; that said executor refused to accept said tender so made in the presence of this deponent.

MINTHORN TOMPKINS.

Sworn before me this 3d April, 1875.
[L. S.] D. C. WINSLOW.

UNITED STATES OF AMERICA,
*Eastern District of New York, ss:*

I, D. C. Winslow, a commissioner, duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and that the fact is, that the same is taken by consent of parties to the suit.

I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the parties to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

I further certify that on the 12th day of June, A. D. 1874, I was attended by Joseph H. Bradley, sr., attorney for plaintiffs, and C. & D. R. Jaques, attorneys for defendants, and by the witnesses, who
91 were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of transmitting the same with my own hand to the court for which the same were taken.

I further certify that I am not of counsel or attorney for either of the

parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this fifth day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

D. C. WINSLOW,
*U. S. Commissioner Circuit Court of the U. S. for the Eastern District of New York.*

In supreme court District of Columbia.

JULIA E. BRICK ET AL.
*vs.*
SAM'L R. BRICK ET AL. } In equity. No. Doc.

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

Be it remembered that at an examination of witnesses begun and held on the 16th day of December, A. D. 1874, and when the within deposition were taken, I, Edward C. Ingersoll, examiner in chancery,
92 did cause to be personally present the within named witness, in the city of Washington, in said District, to testify on the part and behalf of the defendant, in a certain cause now depending in the supreme court of the District of Columbia, wherein Julia E. Brick et al. are complainants, and Sam'l R. Brick et al. are defendants.

Mr. Joseph H. Bradley, esq., appeared for complainant and waived cross-examination and consented to the filing of the deposition.

Burr Wakeman, residing in the city of New York, of lawful age, first duly sworn, deposes as follows:

I am president of the Harlem Gas-Light Company; I reside in the city of New York; I have for many years paid the dividends to the New York holders of stock of the Washington Gas-Light Company. When the dividend becomes payable the secretary of the Washington Gas-Light Company, M'r Charles B. Bailey, sends me a check for the whole amount of dividends payable to the holders of the stock in New York City. The check is made payable to my order; an account of the dividends due each person is sent to me with the draft or check, upon which account a space is left to take the receipt of the party to whom I pay the dividends. Immediately on the receipt of the check or draft and accompanying account, I make out my own checks on my own account on my own bank to pay each party entitled to a dividend. I make out all the checks at the same time for convenience sake, and hold them until the individuals to whom they are payable come for them.

On the 13th of February, 1866, I received a check and account for a dividend payable on the stock at that date, and made out my check in the manner I have intimated on that day. On the 23d of Febru-
93 ary, 1866, Joseph K. Brick, one of the New York stockholders, or one of the stockholders whose dividend was payable at my office (Mr. Brick lived in Brooklyn), called at my office and I paid him his dividend, giving him my check, dated the 13th of February, the day I received the money from Washington, on Manhattan Company, $250; which check I hereto annex.

(The same is here filed, and marked B. W., No. 1; Ingersoll, examiner.)

Brick endorsed the check; I know his handwriting. I have before me

a book belonging to the Washington Gas-Light Company containing the account of dividends transmitted to me on February 13th, 1866, upon which said account is the receipt I took from said Brick. I saw him sign the receipt; which receipt is dated February 23d. On the 23d of February—the day I took the receipt—I transmitted the account, with all the receipts, to Mr. Bailey, the secretary of the Gas-Light Company, at Washington. The original letter is now before me, and I herewith file a true copy of the same, which I have compared and know to be correct.

(The same is here filed, and marked Exhibit B. W., No. 2; Ingersoll, examiner.)

The next dividend was sent me August 3d, 1866, with account in the same manner described before, and I paid Joseph K. Brick his dividend by check, $250, on Manhattan Company, dated August 3d, 1866. I now produce the said check, endorsed by J. K. Brick in his own handwriting, payable to the order of his wife, and by her endorced.

(The same is here filed, and marked Exhibit B. W., No. 3; Ingersoll, examiner.)

BURR WAKEMAN.

94 EXHIBIT B. W., No. 1.—INGERSOLL, *Examiner.*

NEW YORK, *February* 13, 1866.

Manhattan Company pay Joseph K. Brick, or order, two hundred and fifty dollars.

$250.

BURR WAKEMAN.

(Endorsed:) J. K. Brick.

EXHIBIT B. W., No. 2.—INGERSOLL, *Examiner.*

OFFICE OF THE HARLEM GAS-LIGHT COMPANY,
No. 76 NASSAU STREET,
NEW YORK, *February 23d*, 1866.

CHA'S B. BAILEY, Esq., *Secretary Gas Company:*

DEAR SIR: At the request of B. H. Bartol I send you the receipts for dividends sent me, which I trust will reach you safely.

Truly yours,
(Signed) BURR WAKEMAN.

A true copy.

CHA'S B. BAILEY,
*Sec'y Wash. Gas-Lt Co.*

EXHIBIT B. W., No. 3.—INGERSOLL, *Examiner.*

[Stamp.]

NEW YORK, *August 3d*, 1866.

Manhattan Company pay Joseph K. Brick, or order, two hundred and and fifty dollars.

$250.00.

BURR WAKEMAN.

(Endorsed on the back:) Pay to the order of Julia E. Brick. J. K. Brick.

(Endorsed:) Julia E. Brick.

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

95 I, Edward C. Ingersoll, examiner in chancery, do hereby certify that, in pursuance of an agreement of counsel, the foregoing deposition taken down by me, reduced to writing in the presence of and from the statement of the witness, at the time and place designated in the caption thereof, and was then and there by me read over to the witness and by him subscribed in my presence and in the presence of counsel for defendant, who was then and there attending. The witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

E. C. INGERSOLL,
*Examiner.*

UNITED STATES OF AMERICA,
*Eastern District of New York, ss:*

Be it remembered that on this fifth day of January, in the year of our Lord one thousand eight hundred and seventy five, I, D. C. Winslow, a commissioner, duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the acts of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States,"

96 passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at Nos. 168 and 170 Montague street, in the city of Brooklyn, in the said eastern district of New York, in the State of New York, Samuel R. Brick, j'r, to testify and the truth to say, on the part and behalf of the plaintiffs in a certain suit or matter of controversy now pending and undetermined in the supreme court of the District of Columbia, wherein Julia E. Brick, Edward D. White, and James How, executors of Joseph K. Brick, are plaintiffs, and Samuel R. Brick and the Washington Gas-Light Company are defendants, and the said Samuel R. Brick, j'r, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Samuel R. Brick, j'r, and he did thereupon depose, testify, and say as follows, viz:

*U. S. subp.*

The President of the United States of America to Samuel R. Brick, j'r, greeting:

We command you that all and singular business and excuses being laid aside, you and each of you be and appear in your proper persons, before David C. Winslow, a commissioner appointed by the circuit court of the United States of America for the eastern district of New York, in the second circuit, at his office, at the United States court building, Nos. 168 and 170 Montague street, in the city of Brooklyn, in the said

eastern district of New York, on the fifth day of January, one thousand eight hundred and seventy-five, at eleven o'clock in the forenoon of the same day, to testify all and singular what you and each of you may know in a certain proceeding now pending before him, wherein
97 Julia E. Brick, Edward E. White, and James How, executors of Joseph K. Brick, are plaintiffs, and Samuel R. Brick and the Washington Gas-Light Company, defendants, on the part of the plaintiffs. And this you or either of you are not to omit, under the penalty upon each and every of you, of two hundred and fifty dollars.

Witness Hon. Charles L. Benedict, judge of the district court of the United States for the eastern district of New York, at the city of Brooklyn, the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.]

D. C. WINSLOW,
*United States Commissioner,*
*for the Eastern District of New York.*

Supreme court District of Columbia, the 30th day of December, 1874.

JULIA BRICK AND OTHERS, EXECUTORS OF J. K. Brick,
*vs.*
SAMUEL R. BRICK.
} No. 3625. Docket.

The President of the United States to Samuel R. Brick, j'r:

You are hereby commanded to appear as a witness for the complainant, before D. C. Winslow, commissioner U. S. circuit court southern district of New York, on the 5th day of January, 1874, at 11 o'clock a. m., and bring with you all letters addressed to you by the defendant, Samuel R. Brick, relating to stock in the Washington Gas-Light Company.

Witness D. K. Cartter, justice, &c.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, J'R,
*Assistant Clerk, &c.*

98 In the supreme court of the District of Columbia.

JULIA BRICK, EDWARD D. WHITE, AND JAMES How, executors of Joseph K. Brick, plaintiffs,
*vs.*
SAMUEL R. BRICK, AND WASHINGTON GAS-Light Company, defendants.

Before David C. Winslow, U. S. commissioner for the eastern district of New York, at the U. S. court building, Nos. 168 and 170 Montague street, in the city of Brooklyn, New York, on the 5th day of January, A. D. 1875.

Joseph H. Bradley, esq., appears for the plaintiffs. No appearance is made for the defendants.

SAMUEL R. BRICK, j'r, called for the plaintiffs, and being duly sworn, deposes and says, after producing two subpœnas, hereto annexed, which have been served upon him:

I reside in Richmond County, in the State of New York. My age is

40. My occupation a contractor. I know all the parties to this suit. I am the son of the defendant, Samuel R. Brick, and a nephew, by marriage, of Julia Brick, one of the plaintiffs. In answer to the subpœna duces tecum, I herewith produce all the letters I can find written by my father to me, and relating to stock in the Washington Gas-Light Company.

(Plaintiffs here request to produce and examine letter dated Sept. 15, 1864, together with the envelope it came in.)

The letter and the address on the envelope are in the handwriting of my father. It was regularly received by me.

99 Plaintiff's counsel offer the letter and envelope in evidence, and they are marked Exhibit 1 and 2, D. C. W. Letter dated Sept. 18, together with the envelope shown witness, and he says the letter and the address on the envelope is in the handwriting of my father, and were regularly received by me.

Plaintiffs offer the letter and envelope in evidence, and they are marked Exhibit 3 and 4, D. C. W.

Letter dated Sept. 30, 1864, together with the envelope shown witness, and he says, the letter and the address on the envelope is in the handwriting of my father, and were regularly received by me.

Plaintiffs offer letter and envelope in evidence, and they are marked Exhibits 5 and 6, D. C. W.

Letter dated October 19, 1864, shown witness, together with the envelope in which it is contained, and he says, the letter and address on the envelope are in my father's handwriting and were regularly received by me. Plaintiff offers the letter and envelope in evidence, and they are marked Ex. 7 and 8, D. C. W. Letter without date, with the envelope containing the same shown witness, and he says, I do not exactly know when it was received, but it was a few days after I received the letter dated October 19, 1864. The letter and the address on envelope are in my father's handwriting. Letter and envelope offered in evidence by plaintiff, and marked Ex. 9 and 10, D. C. W. It was regularly received by me. I have produced all the letters which I can find from my father to myself relating to the Washington gas-light stock, but these which have been shown to me here, are not all which I produce.

Q. *a.* Did you at any time apply to your father to purchase for
100 you any stock in the Washington Gas-Light Company, and did he refer you to any one; and, if yea, state to whom and when, as well as you can recollect.

A. I did so apply to him, and he referred me to my uncle, Joseph K. Brick. I think it was in summer of 1865.

Q. *b.* Did you apply to your uncle, Joseph K. Brick, to purchase some of his stock in said company; and, if so, what was his reply, and did you or not communicate that reply to your father? State all you recollect on the subject?

A. I did so apply to my uncle, ("Joseph K. Brick, and his reply was that he had had the stock so long that he intended to keep it, that he had no desire") to sell it, and I think I communicated that reply to my father. I think so by my applying to my father after this to get some, as I didn't succeed in getting any from my uncle.

Q. *c.* Do you own any of this stock now yourself?

A. No; not now.

Q. *b.* Did you at any time?

A. I did.

Q. *d.* Did you hold any in the spring of 1866?

A. I think I did.

Q. *e.* Was it before or after the stock was increased?

A. It was after.

Q. *f.* According to your recollection, how much was the stock increased?

A. I think it was doubled; that is my impression.

Q. *g.* Did you ever apply to your father to have him sell to you any of his stock in said company; and, if so, what reply did he make?

A. I did. I applied to him to see if he would sell me any of his, or could get me some, and he replied that he hadn't any of his own which he wished to sell, and that he thought it was impossible to get
101 me any, and referred me to Uncle Joe as he might sell me some of his, and that is the reason why I applied to my Uncle Joe. I could'nt remember what time this was, but it was before I applied to Uncle Joe.

Q. *i.* Did you ever succeed in purchasing any stock from your father?

A. I don't think I did after that application to my uncle.

Q. *j.* Did your father ever represent to you that the stock held by your uncle Joseph belonged to your father?

A. Not to my knowledge.

Q. *k.* Did he speak of it as stock belonging to your uncle Joseph?

A. Certainly; that was what I understood.

M'r Jaques and M'r Minor now appear for defendants and move to strike out two letters, Ex. 1, 2, 3, and 4, including the envelopes, on the ground that they relate to matters anterior to the stock transactions involved in the case. M'r Jacques also moves to strike out Ex. 5, 6, 7, 8, 9, and 10, as irrelevant and incompetent.

Q. *a.* Objected to that it is leading and calls for the conclusion of the witness as to what passed between him and his father.

(It is conceded that the objections are made in time.)

Q. *b.* Objected to as leading, and assuming what is not in proof.

Q. *c, d, e, f,* and *h.* Are objected to as irrelevant and immaterial.

Q. *g.* Objected to as leading, and assuming what is not in proof.

Q. *i.* Objected to as irrelevant.

Q. *j.* Objected to as assuming that the stock in controversy was owned by Joseph K. Brick.

Q. *k.* Objected to, the question is leading, and the answer is irresponsive.

102 Cross-q. by the defendant's counsel:

Q. When did you apply, as you say, to your father to purchase for you any stock of the Washington Gas-Light Co.?

A. I think in the year 1865; can't tell the time of year; think it was in June or July, about the middle of the year. There was nobody present but ourselves; it was on the way to Courtlandt street ferry, New York City.

Q. Is that the same application of which you speak in answer to question *g*?

A. It is one of them. I applied more than once orally; I applied two or three times at his office, 76 Nassau st., New York; am not positive that I applied more than three times—think I did three times; think the third application was at 76 Nassau st., N.Y. One or two applications were made there; am not certain which of the three; 76 Nassau st. was the office of the Staten Island Gas Co. at that time; am certain now there were three applications; think the applications at the gas office were at the time mentioned within a short period of each other, at the time I have specified; the time I mentioned is as near as I can remem-

ber—I kept no memorandum; don't think any one was within hearing of the conversation; don't know who was in the next room, if any one.

Q. *b*. Answer to this—motion made to strike out all after the name "Brick" to and including the word "desire" as incompetent, the representatives can't make title to the stock in question by declarations of decedent.

Q. You say you think you communicated the reply of Joseph K. Brick to your father?

A. Yes; it was soon after the conversation took place. It was
103 at 76 Nassau st.; can't mention the time; I remember it was soon after the conversation took place; can't give the date. Nobody but my father was present.

Q. Have you any other letter from your father relating to this gas stock?

A. I have brought all I can find; have other letters, but not relating to the gas stock. All the letters are now here in court; don't know what are in evidence.

(Exhibits 1 to 10 shown witness.) I understand these are in evidence.

Q. You have other letters from your father other than these exhibits, 1 to 10?

A. Yes, sir?

Q. Did you ever write to your father to buy you some of the gas stock?

A. I did; don't think I bought any. He made me a present of ten shares of Washington Gas stock, as compensation for services rendered him in selling Richmond County Gas stock. I think I got no other stock from him. My father did not buy and carry for me 100 shares of the Washington Gas stock; not to my knowledge; if he did, I never realized anything from it. Never had any communication with him about it that I remember.

Q. Did you never have any communication with your father in relation to buying and carrying for you any of the Washington Gas stock?

(Objected to as irrelevant, and if written the writing must be produced.)

A. May have been.

Q. Did you ever write to your father on that subject?

(Objected to on the same grounds.)

A. May have done so.

Q. Have you any letters from your father besides these you have produced here?

(Objected to as immaterial.)

104 A. Have two or three bushels; have other letters from him from January, 1865, to January, 1867, under objection.

Q. Were you present at the time of a former examination in this suit, when Mrs. Julia Brick was examined before Commissioner Winslow?

A. No, sir; this is the first time I have appeared. I was not in the city of Brooklyn; don't know when it did take place.

Q. Were you in the city of New York?

(Objected to.)

A. How can I tell that, when I don't know when it took place?

(Question repeated. Same objection.)

A. Can't say; was not aware of the examination when in progress.

Counsel for defendants moves to strike out exhibits 1 to 10, and the answers to questions *a*, *b*, *g*, and *j*, on the grounds—1st, that the same are incompetent and inadmissable; also, on the ground that it is in-

competent on behalf of the decedent's estate to show property in the stock was in him, it appearing that he made a sworn application to the board of assessors setting forth that the stock was not his, upon which, by the action of that board, his personal tax was remitted.

Counsel for defendants offer in evidence Exhibit A. D. C. W., and Exhibit B. It is consented that the same shall be received with the same effect as the original could if produced in evidence.

No objection being made to them upon the grounds that they are copies, motion to strike out renewed by counsel for defendants on the grounds last stated.

S. R. BRICK.

Sworn and subscribed before me, July 5, 1875.

D. C. WINSLOW,
*U. S. Com'r.*

105 EXHIBIT 1, D. C. W.

[Envelope.]

[3-cent post stamp.] [Phila., Sept. 15, 1864, Pa.]

S. R. BRICK, J'R,
N. Y.

EX. 2, D. C. W.

PHILADELPHIA, *Sept.* 15, 1864.

MY DEAR SON: Your letter at hand; I have this day bought for M'r Z. & W. 500 shares Washington Gas Stock. I got it for $250 less than they ordered me to pay, by three days hard work. I asked them to make me a present of the $250. I want you to pay attention what they say about it, and let me know. I could have put it in my pocket, but I preferred to act honorable; tell them, if they say anything to you about it, they should give me the $250, as they have made much off of me in that way. In regard to my scrip and over-rousing offer, you can say to him that he will never get it at $26. If you think you can get $40 per share anytime between this and the first of December, I will not sell at even $35. I would like to have $4,000 by the 7th of next month, and I must pay Bucknell for my 392 shares of stock 9th December. If M'r Browning's bill is $30, we will consider it but $40. Is $10 more a difference of $8,340; more, however, than I would give, but if it is worth anything it is worth $30. At $30 it would be worth $250.20 cents, but try for $32. Z. & W. ordered me to purchase at $20 per share; by a hard fight I got it for $19.50, $2.50 less than they ordered.

You will write me on receipt of this, and let me know how all things are on the island, and at the office, No. 76. Also about Harry,
106 and about the draft on the island. Our work has 206 men to raise. We have the money, but no men. Write by return mail.

Our love, and your affectionate

FATHER.

EX. 3, D. C. W.

[Envelope.]

[Phila., Sept. 18, Pa.] [3-cent U. S. postage stamp.]

S. R. BRICK, J'R,
New York.

Ex. 4, D. C. W.

PHILADELPHIA, *Sunday, Sept.* 18, 1864.

MY DEAR SON: Your letter of Friday afternoon came to hand yesterday morning, advising me that M'r B. had offered to give the $24,000; that was my lowest price, but after writing I thought I would give you the right to sell at $23,000, rather than lose the sale, as I can make up the loss, but as you said you had got him up to the $24,000, I telegraphed you yesterday to close up and let him have it, and to transfer at once and remit me the amount by your check or by draft on Philadelphia, to my order, and presume you got my telegraph, as they promised to have it in the office at 10 a. m. I did expect you would have answered me by telegraph. I remained in and out of the office until 2 o'clock. If you have not written me that I may get it in the morning, telegraph me when you get this. In regard to the selling part, I will pay you for all you do for me. When I said sell for $23,000 (this was Staten Island stock), if no more could be had, I done it with much reluctance, but of course I expected you to do the best you could for your father, for virtually it is doing part for yourself; for what I lose you lose, just
107 with the rest. It was perhaps lucky that I were out of the city on Friday, as it brought M'r B. up one thousand, for I might and I might not have said by telegraph take $23,000.

Don't let Browning or any one know what I write you relative to the stock or price; make them believe I want more.

I have enclosed you a written power of attorney to transfer. You can stamp it, as I have none. I telegraphed you to transfer, which I hope you have done. I am entitled to that $250 fairly, and must have it; I can get 974 shares more, but I will take it myself, when I get this money, unless they do what is right with me. I will tell you all the particulars when I see you; do you say to them that they had better give me the $250, and say nothing. I have acted honorable any how. They could have helped me with, or rather you with Browning if they choose to have done so. I wish you had a little to put in this Washington stock. If we whip the rebs, and get the bill through to increase the stock our money will be doubled with the surplus and advance on the stock. We shall organize all new. You can say to Z. & B. that the secretary is agoing to give me a list of all the stockholders and the amount held by each; the secretary and I work together; he is buying also.

Your affectionate

FATHER.

If Browning backs down from the $24,000, you had better let him go.

Ex. 5, D. C. W.

[Envelope.]

[Phila., Sept. 30, Pa.] [3-cent postage.]

S. R. BRICK, J'R,
N. Y.

108 Ex. 6, D. C. W.

PHILADELPHIA, *Sept.* 30, 1864.

MY DEAR SON: I got home safely at 9 o'clock. It appears they have my name in the Philadelphia directory 76 Nassau street, N. Y., and not 1911 Arch street. How it so happened I can't tell. That was the way

the letter about the Washington stock came to be sent to N. Y. Now, my son, don't say one word about any of my stock operations to any one —your Uncle Joe or in the gas office. I will make up that $250 yet.

Your affectionate

FATHER.

Ex. 7, D. C. W.

[Envelope.]

M'R S. R. BRICK,

*Present.*

Ex. 8, D. C. W.

PHILADELPHIA, *Oct. 19th*, 1864.

MY DEAR SON: Your letter with check was duly received. You speak of confidence. My son, I always reposed a father's confidence in you. I take great pleasure in your integrity and honesty, so I do in your brother Joseph; but further, it and H. will come right some time, I hope. You say you would like to have 40 shares of W stock. I don't think it can be had, even at $21. I will give $21 if I can get it for you for less than par I will do so, or even par; but I have no hopes of that. The fact of my buying has put it up. I doubt whether it can be had at $22. I this day bought you a flag 12 by 18 feet, which I thought large enough for your pole; it is made of the best bunt-
109 ing. I paid $43. The one I looked at had a slight stain on one end of the red stripes; it does not hurt it, however. They loaned it to some one who returned it so; that one they put at $46.00. I made this bargain with them. If you would prefer one 14 by 21 for $46.00, you can have it by returning this one at once by express at your own expense each way. Either one is much cheaper than you can get the bunting and make it; that you must see at a glance. You would have to get 78 yards of bunting to make one 12 by 18 at 60 c'ts, $48.80, and then the making. It is true you would have the stripes left for small flags. Write me at once. I got it at No. 719 Chestnut street, where you can return it if you prefer the larger one. M'r Walbraven (over). Your dear mother is quite poorly with her heart again. I made a blot and a blunder below and cut it off.

I am, my dear son, your affectionate

FATHER.

All send their love to you and hope you are well.

Ex. 9, D. C. W.

Envelope.]

[Phila. [3-cent stamp.]

SAMUEL R. BRICK, J'R.

N' Y.

Ex. 10, D. C. W.

FRIDAY NIGHT.

MY DEAR SON: I went down as soon as I got your letter, which was late, and ordered the flag, 14 by 21. You will find it all right. You will return the other one to the parties at once by Harden's Express Co. and pay the express charge, and direct to E. Walbraven, 719 Chestnut street. Be careful and do it up well. I will pay them the $3.00 over the

check for you. You can hand it to me when I come on. Now
110 send the flag at once. You will get the other to-morrow by express. Emma left here for N. Y. yesterday to stay a few
She is at M'r Beasley's, 44 Adelphi street, Brooklyn. Mother is better, and sends her love; so do we all. I fear W. gas stock can't be had at any price; the holder smells a mice. If I can get for you I will.

Your affectionate

FATHER.

EXHIBIT A, D. C. W.

COUNTY OF KINGS,
*City of Brooklyn, ss:*

J. K. Brick, being duly sworn, deposes and says that his residence is at No , cor. Lafayette and Vanderbilt, in the 20th ward.

That amount of personal property held by him after deducting his just debts and liabilities, exclusive of stocks of incorporated companies in this State, does not exceed the sum of $1\frac{1}{100}$. That he has no personal property of any description in his possession not included in the above statement.

J. K. BRICK.

Sworn to before me this 25th day of July, 1866.

JOHN DOHERTY,
*Assessor.*

The above is an exact copy of the original on file in the assessor office, Brooklyn, New York.

Brooklyn, Jan. 5, 1875.

JOHN TRUSLOW,
*President of Board of Assessors.*

111 EXHIBIT B, D. C. W.

2192. Joseph K. Brick, cor. Lafayette and Vanderbilt ave.

Valuation of personal estate 3,000 (cancelled). General tax 93.81 (cancelled). Remarks: Cancelled by order of assessor, May 7, '66, report 1254. L. D. S.

Folio 191, tax roll 20th ward, Brooklyn, 1865.

*Collector of Taxes and Assessments.*

UNITED STATES OF AMERICA,
*Eastern District of New York, ss:*

I, D. C. Winslow, a commissioner, duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness' testimony is material and necessary for p'aint-

iffs in the cause of action mentioned in the caption hereof, and that the witness lives at a greater distance from the place of trial of said cause than one hundred miles.

I further certify that the deposition was taken in pursuance of the stipulation hereto annexed.

112 I further certify that on the fifth day of January, A. D. 1875, I was attended by counsel for plaintiffs and for defendants, and by the witness, who, being of sound mind and lawful age and the witness being by me carefully examined and cautioned and sworn to testify the whole truth, and the deposition reduced to writing, in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same with my own hand to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this fifth day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

D. C. WINSLOW,
*U. S. Commissioner Circuit Court of the U. S.*
*for the Eastern District of New York.*

In the supreme court of the District of Columbia. In equity.

JULIA E. BRICK ET AL.
*vs.* } No. doc.
SAMUEL R. BRICK ET AL.

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

113 Be it remembered that an an examination of witnesses begun and held on the 17th and 18th day' of June, 1874, January 30, and February 5, A. D. 1875, and continued from time to time by me until Feb. 26, A. D. 1875, when the within depositions were taken, I, Henry W. Garnett, an examiner in chancery, did cause to be personally present at the office of the Gas Company and my office, No. 1, Columbia Law Building, in the city of Washington, in said District, B. H. Bartol, Samuel R. Brick, and Charles B. Bailey to testify on the part of the defendants in a certain cause now pending in the supreme court of the District of Columbia, wherein Julia E. Brick et al. are complainants and Samuel R. Brick et al. are defendants.

HENRY W. GARNETT,
*Examiner in Chancery.*

In the supreme court of the District of Columbia.

JULIA E. BRICK ET AL.
*vs.*
SAMUEL R. BRICK ET AL.

JUNE 17, 1874.

Met in pursuance of agreement, and each party present by counsel. The following depositions were taken:

*Deposition of Barnabas H. Bartol, witness for defendant.*

The witness, being of lawful age and having been duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

I am president of the Washington Gas-Light Company; I was elected in November, 1864, and have been president ever since; I am acquainted with M'r Samuel R. Brick, one of the defendants in this suit.

M'r Samuel R. Brick is a stockholder in the Washington City Gas-
114 Light Company, but has no other connection, to my knowledge, since I have been president. I have no remembrance of M'r Samuel R. Brick being employed by the Gas-Light Company since I have been president. I have known M'r Samuel R. Brick since about the year 1849. I knew M'r Joseph K. Brick (now dead), the brother of Samuel R. Brick, since about the same period. I knew him as a constructor of gas-works and a manufacturer of gas-work material, and also as superintendent of gas-works. Joseph K. Brick & Co. furnished material for the Washington Gas-Light Company for many years, until he died; I know that we purchased from him since 1864, year after year, and we still continue to buy from his successors. Joseph K. Brick was a stockholder in the Washington City Gas-Light Company; I do not know when he became such, but his name appears on the books for two hundred and fifty shares. About the year 1866, meeting M'r Joseph K. Brick in New York, he asked me the then price of Washington Gas shares and told me that he had loaned his brother Sam the money to buy the two hundred and fifty shares of stock; that he (Joe) held the stock; that Sam wanted to obtain the stock, and that he (Joseph) thought that he should have a portion in the advance in shares, and he wanted to know what I thought of it. I replied it depended entirely upon the understanding between the two brothers. At this time M'r Joseph K. Brick knew that I was the president of the Washington Gas-Light Company perfectly well. I supposed that he referred in this conversation to the two hundred and fifty shares which stood in his name on the books. He said that he had loaned Sam the money to buy these two hundred and fifty shares of stock, and that he held the stock for the loan.

Adjourned until 10 a. m., June 18, at the same place.

HENRY W. GARNETT,
*Examiner.*

115 JUNE 18, 1874.

Met in pursuance of adjournment, there being present the counsel for complainants and defendants.

M'r BARTOL recalled.

Q. Were you ever notified by Samuel R. Brick that the stock standing upon the books of the company in the name of Joseph K. Brick, was really the property of him, Samuel; and, if you were ever so notified, did you take any, and what, action with regard to that stock, its transfer, or regard to the dividends accruing thereon?

(Objected to as being the statements of the defendant, and the action of the witness founded on such statement.)

Subsequent to August 1, 1867, M'r Samuel R. Brick notified me that I, as president of the company, must not pay dividends or allow the stock to be transferred. I instructed M'r Bailey, the secretary, not to pay the dividends or transfer the stock, and we find in looking over the receipts

that M'r Burr Wakeman receipted for the dividend for August 1, 1867, since which none has been paid. M'r Wakeman was in the habit of receipting for all the New York stockholders—the checks for the dividends being remitted to him. I presume that this notice from M'r Samuel R. Brick was not in writing as I find no note of it on the record.

Q. Were you informed by M'r Samuel R. Brick, any time before August, 1867, and, if you can recollect, how long before August, 1867, the stock in question really belonged to him and not to Joseph K. Brick?

(Objected to as not admissible for any purpose.)

A. Very frequently M'r Brick would speak of the stock as being his, and that Joseph had loaned him the money. At the time he pur-

116 chased M'r Bucknell's stock he mentioned to me that he expected to get part of the money from Joe.

Cross-examination:

Not waving but still insisting upon the objections heretofore taken upon the examination of this witness in chief, the complainants put the following cross-interrogatories:

From 1860 to his death Joseph K. Brick resided in Brooklyn, N. Y., and from 1860 Samuel K. Brick resided in Philadelphia.

From 1860 until a year before his death I saw M'r Joseph K. Brick from four to six times a year. I saw M'r Samuel R. Brick twice or three times as often. I was a stockholder in the Washington City Gas-Light Company before 1864.

I do not remember having any conversation with Samuel R. Brick in reference to the condition of the Washington City Gas-Light Company, and the value of the stock, previous to September, 1864.

In September, 1864, I was not aware that the Washington City Gas-Light Company intended to apply to Congress for an increase of its stock.

Immediately after I was elected president in November, 1864, the company applied to Congress for an increase in the price of gas, and the act was approved January 30, 1865. Shortly before May, 1866, the company applied to Congress for an increase of capital stock, which was granted by an act of May 24, 1866.

I presume that the conversation with Joseph K. Brick was prior to the increasing of the stock, because the increased stock was not sent to him, and was not issued for some time after his death. In 1864 and 1865 the stock was much depressed. In January, 1866, the company paid a dividend, and the stock advanced.

117 I cannot say whether M'r Samuel R. Brick ever mentioned to me the contents of the letter of Joseph K. Brick to Samuel R. Brick, of May 5, 1866 (a copy of which is hereby made an exhibit).

I am sure the letter was never exhibited to me, as the last part would have attracted my attention in regard to the payment of the dividends.

The books of the company show that Joseph K. Brick receipted, in his own handwriting, for a dividend, on the 23d of February, 1866.

I cannot state the exact day, but it was somewhere between the 1st and 31st of August, 1867, that I received the notice from Samuel R. Brick, to which I have testified, not to pay any dividends or allow the stock to be transferred, of which I gave notice to M'r Bailey before the 31st of August, for on that day I left for Europe and did not return until the 13th of February, 1868. It was immediately after the stock had advanced, soon after the payment of the dividend in February, 1866, that M'r Joseph K. Brick, upon my meeting him in New York, asked me the price of the gas stock, and informed me that he had loaned Sam money

to buy stock, and that he, Joe, held the stock, and Sam wanted to get it back, and he, Joe, thought he ought to have a part of the advance in price, and he wanted my opinion.

The increased capital, which was one hundred per cent., was divided among the stockholders without any additional cash being paid in by the stockholders; the improvements put upon the property being equal to the increased capital.

Redirect:

The new and increased stock was issued October 1st, 1868.

B. H. BARTOL.

118 Read to the witness, and signed by him in my presence.

HENRY W. GARNETT,
*Examiner.*

Two letters here filed by consent, marked Exhibits A and B, which it is agreed by the counsel are in the handwriting of Joseph K. Brick, and were duly received by Samuel R. Brick.

HENRY W. GARNETT,
*Examiner.*

It is further agreed that either party may read to the court from any act of Congress, in relation to the Washington Gas Company, private or public.

HENRY W. GARNETT,
*Examiner.*

EXHIBIT A.

BROOKLYN, *September* 12, 1864.

DEAR BROTHER: Yours of yesterday came to hand this evening. I saw M'r Bills, and he said the same to me—had no money, but if you had been a day sooner he could have taken it. He asked me the question how much capital you have to pay interest on, and I could not answer; please let me know that. If you want the money immediately I can raise the money on call for 7 or $8,000, if you need it, 7 per cent. No trouble about it at all, and in the mean time you can sell.

I must decline the coal for the same reason. I have no money without borrowing, and that I dislike to do. I will not get in debt to speculate; it is a bad policy, and I feel mean to do it, particularly at this time, as we do not know what will happen in the money affairs of the country.

I can raise the funds for you in the way I named.

You did not say about Gautier, &c., &c.

Yours, in haste,

JOSEPH.

119 I want to see you in the Washington Gas Co., and get things straight.

You have some of our metres not yet sent.

J. K. B.

EXHIBIT B.

BROOKLYN, *May* 5, 1866.

DEAR BROTHER: If you remember, some year and a half ago, when

I got the Washington Gas stock, I took it to give you strength in the company, which was the fact. Now, there is a State law in this State that gives assessors power to assess all stocks owned outside of the State to the full amount at the same rate as real estate, which is about 3½ per cent. At that rate you see what little advantage it would be for me to hold stocks outside of the State. Now, this has been got hold of by an assessor, and I made the above statement to set them aside. I told them it stood on the books in my name, but I held it for your benefit; which is so, as I should never have bought under any other circumstances.

Now, I want you, as soon as you receive this, advise the president or secretary that such is the case, and if they write from here to know anything about the matter, to say so or pay no attention to them.

In the meantime I will give you a power of attorney to sell or take it to yourself, as I need the funds very much in my business and must raise some money at once. Please let me hear from you what it is worth in your market. I cannot afford to hold it, as I want money badly and that pays nothing.

I hope you will lose no time about writing to the secretary or president, as it may be.

I have been hoping to come on before this, but have been too unwell during the winter to leave home and travel so far.

120 I am sorry I did not see you when on here, but had an appointment that day at the hour named, and M'r Stanley the same way.

Please let me hear by return of mail, as you say, and mark it private, as I do not want it opened by those at the works. Be sure and mark it so.

Yours, &c.,

JOSEPH.

We as usual. Remember us to Hatty and others, &c.

JANUARY 30TH, 1875.

Met at my office by agreement, there being present M'r Bradley and M'r W'm B. Webb, counsel for complainant, and Samuel R. Brick.

*Deposition of Samuel R. Brick, one of the defendants.*

The witness affirmes that he will tell the truth, the whole truth, and nothing but the truth, deposes and says:

(M'r Bradley objects to the testimony of M'r Brick, as he is one of the defendants.)

Q. Did your son, Samuel R. Brick, at any time, and, if you can recollect, when, apply to you to purchase for him, or to assist him in purchasing, shares of the Washington Gas-Light Co. stock?

(Objected to, as M'r Brick was present at his son's examination, and, if now brought to contradict him, might then have been examined in his presence as a witness, and if the witness is to be impeached he has a right to be present, and has had no notice, and the question is immaterial, and the facts are not admissible.)

A. He did; in the latter part of 1864. He importuned me to purchase stock as soon as he could get the money to pay for it. In July, 1865, he wrote to me.

121 I here produce that letter, which is in my son's handwriting. (Letter here filed and marked Exhibit H. W. G. No. 1.)

On the 10th of August, 1865, I bought one hundred shares of stock for my son Samuel; drew up my own note and deposited that, with collateral security, and notified him on the 10th of August, 1865, that I had bought him one hundred shares of stock in the Washington Gas-Light Co.; on the 11th he writes that he received mine of the 10th.

(Letter here filed and marked Exhibit H. W. G., No. 2.)

I gave my check on the bank in payment for the one hundred shares, and transmitted the certificate to my son. I had the shares transferred to him on the books of the gas co. before I transmitted the certificate.

I received a letter from him which I here produce.

(Letter filed and marked Exhibit H. W. G., No. 3.)

On the 26th of August, 1865, he wrote to me enclosing a check for $1,900, part of the purchase-money for the stock.

(Letter here filed and marked Exhibit H. W. G. No. 4.)

I here produce four letters from my son, which are all the letters received from him on the subject.)

(Letters here filed and marked Exhibit H. W. G., No. 5; Exhibit H. W. G. No. 6; Exhibit H. W. G. No. 7; Exhibit H. W. G. No. 8.)

These letters are all in my son's handwriting, and were received by me in due course of mail.

I never had any other transactions with my son in reference to the Washington Gas-Light Co. stock, except as is shown in one of the letters I made him a present of ten shares in October, 1874.

Q. Did you at any time in response to an application on the
122 part of your son, in respect to this Washington Gas-Light stock, refer your son to your brother, Joseph K. Brick, as the owner of stock which he might be willing to sell?

(Objected to for the same reasons assigned in the objection to the first question.)

A. I never did; there was no occasion for so doing, because he could get as much as he wanted in the market if he had the money to pay for it.

Q. Did your son at any time ever inform you that he had made an application to your brother Joseph for the purchase of any Washington Gas-Light stock?

(Objected to for same reason.)

A. No, sir.

Q. Can you state what disposition your son made, if he ever made any, of the shares of the Washington Gas-Light Co. stock procured by him in the manner you have testified?

(Objected to as immaterial and irrelevant.)

A. I have a faint recollection that he told me that he sold it to Col. Burr Wakeman for $40.00 per share; he sold the hundred and ten shares for $4,400.

Cross-examination:

Subject to the above objections already interposed; the complainants' counsel not waiving the same, but insisting thereon, cross-examines the witness as follows:

Q. Were you present at the examination or cross-examination of your son, Samuel R. Brick, on the 5th of January, 1875, before D. C. Winslow, esq., in the city of Brooklyn, N. Y., when the deposition of the said Samuel Brick was taken in this cause?

A. I was present at the cross-examination, but not at the examination-in-chief.

SAMUEL R. BRICK.

Read to the witness and signed by him in my presence.

HENRY W. GARNETT.

123 EXHIBIT No. 1., H. W. G.

OFFICE OF THE RICHMOND COUNTY GAS LIGHT CO.,
No. 76 NASSAU S'T,
*New York, July 31st*, 1875.

MY DEAR PAP: Yours of the 28th and 30th at hand. The one of yesterday did not come to hand until this afternoon. Sometimes I do not get your letters for two days, when you drop them in your station-office instead of the regular post-office. The seal we do not think amounts to anything, and is not worth advertising. We have concluded to have the lamp tube the same as in New York, as our agreement calls for the same as New York's and will cost much less. M'r Z. and Wakeman does not like Philadelphia style of tube, and if they did they do not think they have any right to alter it from the New York style, as they may object, if they see fit, to receive them after they are up, and they do not want them to have any holt on us in any way.

You can send on another calker if he is good for anything, as we can make use of him. We will not give over two (2) dollars per day.

I intended to send you your check in my last lettter, but forgot it until the letter was mailed. I think you will be sure to get it this time.

I called on M'r Shaw this afternoon, but did not see him, nor will not until to-morrow, as he will not be in his office until that time. He was here all the morning examining my books, but as your letter did not get here until afternoon he had left, and I could not tell him what you desired, but will try and see him to-morrow.

I would like to have 50 to 100 shares of Washington stock very much, but will not be able to pay for it until this time next week, so I must lose this chance. See if you cannot get me one hundred shares by next week at 22 per share. Can you not hold on to one hundred
124 shares of that you have bought until next week? If you can, telegraph to me before I see Shaw.

When I arrived here this morning I heard that mother and sister had been here and gone down to the island. I have not seen them yet, but will when I go down, as I expect they will remain there some time before returning home.

3 O'CLOCK P. M.

Your letter of yesterday at ha'd. I will take that flag 14 by 21 for forty-six dollars, and will send you check for the amount if you get it. Advise me likewise if my check comes to hand.

Your son,

SAM.

EXHIBIT H. W. G. No. 2.

OFFICE OF THE RICHMOND COUNTY GAS-LIGHT CO.,
No. 76 NASSAU S'T,
*New York, August 11th*, 1865.

MY DEAR PAP: Yours of the 10th instant at hand. I am very much obliged to you for your trouble with the stock, and will have the money in time.

I will leave to-day with mother, sisters, and Mary for Saratoga, this afternoon at 5 o'clock, but cannot say at what house we will stop at un-

til we get there, as we must run our chance to get rooms. You will come on as soon as you can, as I must return and look after things on the island and get my money in time.

I will send mother's trunk, &c., to the boat, and check through, with the exception of the large basket, which I will send home to you to-day directed to Arch street. If Westcott will not take it, as they are left at their office, I will send it by Harnden's Express. When I get at Saratoga I will write you what house we are at and how we got on. All send love.

Your ever affectionate son,

SAM.

125 AUGUST 11TH—4½ o'clock.

P. S.—Your letter of the 9th instant just received. This is the one you put in the suboffice A; so you see your letters does not come regular when you put in this suboffice. Got yours of yesterday this morning.

EXHIBIT H. W. G. No. 3.

OFFICE OF THE RICHMOND COUNTY GAS-LIGHT CO.,
No. 76 NASSAU STREET,
*New York, Aug. 25th*, 1865.

MY DEAR PAP: Yours of the 23d received this morning; I am glad to hear mother got home safe.

I am sorry to say that I cannot send you my check for the stock to-morrow, as my man has not got the tank tight; yet, he is at it to-day, and if he succeeds in making it tight, I will get my money on Monday. This is all Diely's fault. I shall make him pay all expenses. If you do not get my check on Monday morning, which I think doubtful, you had better renew it for ten days longer, and then I will be sure to have the money they owe me—eighteen hundred dollars; the balance I have on hand. I shall make Diely pay for the interest, stamps, &c. Do not sell any bonds or anything else, as I will be sure to get my money the last of next week, if not sooner.

Pap, I want you to leave home on Monday, so as to be on the island on Tuesday. Frain wants to see you 11 o'clock Tuesday morning about the contract for Southfield. I told him we would give our pipe money to the committee, as we did in his town; so he wants to see you without fail on Tuesday on the island.

I got a telegraph from Alfred at 2 o'clock to-day; got here at 12, but did not receive it until two, as I did not come up until that time. I sent mother's trunk on Wednesday, at 2 o'clock boat, and gave the
126 check to the conductor to give you in Philadelphia; you will have to see him about it.

Had to discharge men for want of pipes.

Love to mother and all.

Your ever affection' son,

SAM.

Send us on 20-light dry metre immediately.

S. R. B., J'R,
*Secretary.*

EXHIBIT H. W. G. No. 4.

OFFICE OF THE RICHMOND COUNTY GAS-LIGHT CO.,
No. 76 NASSAU STREET,
*New York, Aug. 26th*, 1865.

MY DEAR PAP: I telegraphed you to-day, so that you would not renew the note. My man got the tank tight yesterday, and so I went this morning and got check for balance due me.

Enclosed, you will please find check for nineteen hundred dollars, the balance I will hand you when you come on, as I do not know what brokerage interest on note, &c. I have to say my account against you, including Alfred's, is about two hundred and forty-seven dollars; Alfred's account, seventy-nine dollars and fifty cents.

I will give you statement when you come on, which I hope will be Monday or Tuesday.

All goes well at the island. Got fifty lamp-posts up. Love to all.

Your ever affection' son,

SAM.

127 EXHIBIT H. W. G. No. 5.

OFFICE OF THE RICHMOND COUNTY GAS-LIGHT CO.,
No. 76, NASSAU STREET,
*New York* (4 o'clock), *Aug. 9th*, 1865.

MY DEAR PAP: Yours of yesterday at hand; I did not come up to-day until 11 o'clock boat; got here 12 o'clock. On receipt of yours, I telegraphed you to take one hundred shares for me; I would take the whole one hundred and twenty-five shares, but will not be able to get enough in time, as I cannot get them to pay when I first render my bills. I called to see M'r Shaw this afternoon; he says he will take the twenty-five shares at twenty-two dollars per share, so you can make the balance, or twenty-five shares, out of him, and make twelve and a half dollars by it. I would have had all my money, twenty-seven hundred dollars, from Erie Railway Company for work on boat last week, if it had not been for Phil. Deily. All my work was finished, and the boat went on a trial trip last week. When the gas was turned on the tank to fill, I found it leaked all over, and would not hold gas, so they refused to give me any money until it was made tight; but I made out on Monday to get one thousand out of them on account to pay some bills, and will collect enough of other debts by the time I get the balance to take and pay for the stock.

So you see that damn fool has got me in all this trouble by not sending on good men to do his work. I will have a bill of fifty dollars damages against him. My men are at the tank to-day, and have got the top (rubber) off and painting it inside and out. If that does not make it tight he will have to send men on to do it himself; but I think my men will make it tight and finish it to-day; if so, I will get my money on Saturday or Monday; but if I go away with mother and the girls on
Friday, it will delay me until the middle of next week; but,
128 as you say, woman makes no allowance for a man's business, and may insist on going on Friday; but I will not leave until I hear from you again about that stock. If you must get the money from the bank I will pay all interest, stamps, &c. Whatever you do in the matter I am satisfied with, and thank you for your kindness.

I will see mother this evening, when I go down and have a talk with her about going to Saratoga. I gave Matilda (or Lillie) her letter. She

came up in the carriage with Mary this morning. We are shoving things through on the island. I wish you would call on R. D. Wood & Co., and get them to send us some 3-inch pipe on sooner than the last of this month, as we will have everything done up that we have on hand before that time and will be idle. Old Hamilton says he will not apologize to the company; he will see them damn first. It comes up to-morrow before a jury, but Frain, who is his attorney, says he will have it put off for another week. Mother was very sick with a heavy cold on Saturday, Sunday, and Monday, but is up now and much better. We all send love.

Your ever affectionate son,

SAM.

EXHIBIT H. W. G. No. 6.

OFFICE OF THE RICHMOND COUNTY GAS-LIGHT CO.,
No. 76, NASSAU STREET,
*New York, Aug. 4th*, 1865.

MY DEAR PAP: All your letters came to hand in time, mother and Matilda's. M'r W. and Z. did not receive the letter sent by you of 31st July until Wednesday, as they were put in station office.

Mother is well. She expected you on to-day, and she came over with the intention of going home, but as you said in your letter that
129 you would be on next week and take them to Saratoga or some other place, she concluded to remain with us until you come on.

When mother and sisters came up here, Alfred left the same day. They came for the old place he was at about two years ago in Pennsylvania, but before they left Long Branch he gave his check for the amount of their bills, so you will have nothing to pay there.

I received the things sent by you this morning (by Harnden's Express) and gave them to mother, as she is up with Mary (and horse and carriage).

You can send that caulker on; we have plenty of work for him. You can look out for one hundred shares Washington stock for me. I will have the money about this time next week.

Committee of Southfield, that is our town, have been to see me about lamps. I am to see them this evening. They intend to put it through.

Mother and all send love.

Your ever affectionate son,

SAM.

In haste—4½ o'clock.

Mother will leave her trunk over the express office here until you come on, as they cost nothing for storage, and will cost several dollars to take them to the island.

EXHIBIT H. W. G. No. 7.

We are burning 33,000 ft. per night.

OFFICE OF THE RICHMOND COUNTY GAS-LIGHT CO.,
No. 76 NASSAU STREET,
*New York, October 17th*, 1864.

MY DEAR PAP: Both of your letters of the 14th instant came to hand on Saturday, and would have written to you then, but did not see

Browning until late in the afternoon. He did not want any time, so he gave me the new check dated 15th, so you will lose Sunday and
130 to-day's interest. He took good care not to come to the office or see me until after the bank had closed (3 o'clock), for fear, I think, that I might get it in on Saturday, which I would have done if I had got it before 3 o'clock. It is now in my bank, and enclosed you will find my check payable to your order for the amount—twelve thousand dollars, which I hope will arrive safe.

I found enclosed in your letter scrip*t* of Washington gas-stock for ten shares, $200, which I am very much obliged to you for, indeed.

I am likewise happy to know that you have that confidence in your son, to know that what ever he may do for you, or anybody else, will be done honestly, and in a business-like manner.

I would like, Pap, to have about one thousand dollars in the Washington stock (50 shares), and if you can get me eight hundred dollars, or forty shares more, at par, I will take it, and send my check for the amount as soon as transferred. Will you see what you can do? I would take two or three thousand dollars if I could get my money in time to pay up.

Pap, you will please get me enough bunting to make me a flag ten by fifteen (10 by 15), which I think will be large enough for my pole. I will have it made at home, and save that much expense.

I would do without a flag before I would give 110 dollars for one 13 by 20. One 10 by 15 will be large enough, and cost less. Send it on by Harnden's Express, and bill by mail, and I will remit you a check for the amount.

Get the best bunting.

John, in collecting back gas-bills, has found another one Harry has collected, and has not handed over the money. The name is M'r's Hayer; amount, $3.65. She says she cannot now find the bill, but will swear she paid it, and will not pay it over again. What shall I
131 do with this and others he has received, as John wants to close his accounts?

Give my love to mother and all. Accept the same from your ever Affectionate son,

SAM.

EXHIBIT H. W. G. No. 8.

OFFICE OF THE RICHMOND COUNTY GAS-LIGHT CO.,
NO. 76 NASSAU STREET,
*New York, October 20th*, 1864.

MY DEAR PAP: Yours of yesterday at hand, likewise the flag, which I found at the office when I arrived here. If the one 21 by 14 is not too much soiled I would prefer it to this one, as it is much larger, and would willingly give three dollars more for it; but if it is much soiled I will keep this one; this has several spots on it, but it will not hurt. I will keep this until I hear from you again. I intend to hang the flag across the street.

Enclosed please find check for forty-three dollars to pay for flag, and accept my thanks for your trouble and kindness.

I will take that stock for whatever you say it is worth, but would like you to get it at par if possible.

I am very sorry to hear mother is sick again, but hope she has recov-

ered. I am not well to day, as my head is bad. Give my love to all Accept the same from your ever

Affectionate son,

SAM.

In haste.

FEBRUARY 5TH, 1875.

Met at my office, No. 1 Columbian Law Building, there being present M'r W'm B. Webb, solicitor for defendant, when the following deposition was taken:

132 CHARLES B. BAILEY, being first duly sworn, deposes and says: I am the secretary of the Washington Gas-Light Company, and as such have charge of the books of the company, showing all the transactions with respect to the stock issued by the company; when issued, to whom issued, all the transfers made of said stock, the date of such transfers, and to whom the transfers were made. I have recently examined the books of the company in reference to the stock held by Samuel R. Brick, j'r, of Staten Island, New York, and made a copy, or rather caused a copy to be made, of that portion of the stock-ledger of the company which shows the transactions made by Samuel R. Brick, j'r, in the stock of the company, and I produce here, annexed to my deposition, that copy, with my certificate as to its correctness.

(Copy here filed and marked Exhibit C. B. B., No. 1.)

It appears from this account that Samuel R. Brick, j'r, obtained ten shares of the company's stock on October 6th, 1864, and one hundred shares on the 11th of Aug., 1865, and that on the 27th of July, 1868, he transferred the whole one hundred and ten shares to M'r Burr Wakeman.

M'r Samuel R. Brick, j'r, never had any other transactions in the stock of the company except that I have above stated. The stock is only transferred upon the books of the company.

CHA'S B. BAILEY.

Read by the witness, and signed by him in my presence.

HENRY W. GARNETT, *Examiner.*

The solicitor of the complainants not objecting to, but waiving all objections to the form of the foregoing testimony of Cha's Bailey, objects to its materiality and substance as irrelevant and inadmissible.

HENRY W. GARNETT, *Examiner.*

133 EXHIBIT C. B. B. No. 1.

*Samuel R. Brick, J'r, of Staten Island, N. Y.*

| Dr. | | | Cr. | | |
|---|---|---|---|---|---|
| 1868. | | Shares. | 1864. | | Shares. |
| July 27. | To Burr Wakeman. | 110 | Oct. 6. | By W. Bucknell..... | 10 |
| | | | 1865. | | |
| | | | Aug. 11. | By W. M. Kelly ....100 | |
| | | 110 | | | 110 |

OFFICE OF THE WASHINGTON GAS LIGHT COMPANY,
No. 415 10TH STREET, N. W.,
*Washington, Feb. 3d,* 1875.

I hereby certify that the above is a correct copy of an account, stand-

ing in the name of Samuel R. Brick, j'r, upon the stock-ledger of the Washington Gas-Light Company, and that the same is the only account in the said name upon the books of the said company.

CHA'S B. BAILEY,
*Secretary of the Washington Gas-Light Co.*

NEW YORK, *January* 15, 1875.

SAMUEL R. BRICK, ESQ.:

DEAR SIR: I duly received yours of the 14th, and noted its contents. It is too early to talk about coal. I do doubt that I shall be able to sell coal delivered in this city and Philadelphia as low or lower than other companies. As per your request I enclose you my canceled check, dated July 22d, 1868, in favor of and endorsed by S. R. Brick, j'r, for $4,400.00, which I gave him at that date, for one hundred and ten shares of Washington Gas-Light Co. stock.

This was before the surplus stock was divided. I do not remember his informing me how he got the stock. I knew of his having the stock long before I bought it. After you have done with the check 134 please return it to me. I hope you will soon be able to bring this long-contested suit to a close. If you visit the city please call and see me. With kind regards to your family, I remain, as ever,

Truly yours,

BURR WAKEMAN.

*Check.*

[Stamp.]

NEW YORK, *July 22d*, 1868.

Manhattan Company pay S. R. Brick, j'r, or order, fourty-four hundred dollars.

$4,400.00.

BURR WAKEMAN.

(Endorsed:) S. R. Brick, j'r.

In the supreme court of the District of Columbia.

BRICK ET AL. *vs.* BRICK ET AL. } No. 3625. Equity docket, 13.

It is agreed in this cause that the letter of M'r Burr Wakeman, dated New York, January 15, 1875, and the check enclosed therein, bearing date July 22, 1868, drawn by Burr Wakeman on the Manhattan Company in favor of S. R. Brick, j'r, or order, for forty-four hundred dollars, and endorsed by the said S. R. Brick, j'r, may be read at the hearing of said cause as if the said Burr Wakeman had been duly produced before an examiner of the court and had made deposition to the facts in the said letter and check contained and set forth, subject to the objection on the part of complainants' solicitor to such testimony for all matter of substance, but not for any matter of its form.

JOSEPH H. BRADLEY,
*For Complainants.*
W. B. WEBB,
*For Defendant.*

135 DISTRICT OF COLUMBIA,
*County of Washington, ss:*

I, Henry W. Garnett, examiner in chancery, do hereby certify, that in pursuance of agreement of counsel, the foregoing depositions were taken down and by me reduced to writing, in the presence of and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence and of counsel, who then and there attending. The witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said case.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

HENRY W. GARNETT,
*Examiner in Chancery.*

136 Supreme court, District of Columbia. Sitting in equity.

BRICK AND OTHERS
*vs.*
BRICK.
} No. 3625. Doc. 13.

The complainants in the above-entitled cause, move the court to strike out the question put to and the answer thereto of B. H. Bartol, on the 18th of June, 1874, before H. W. Garnett, examiner, &c., being the first question and answer put to that witness on that day, because of the reasons assigned in the objection there made, as returned by the examiner, and because it relates to matters occuring subsequent to the death of the complainant's testator.

Sustained.

Second. Also to strike out the next question and answer of the same witness, for the reason stated in the objection as returned by the examiner; and because it is an effort to get in evidence, the declarations of the defendants not made to said testator or in his presence, but after his death.

Sustained.

Third. And also to strike out the whole of the testimony taken before the examiner, Garnett, on the 30th of January, 1875, or on any subsequent day, for the reasons assigned at that time, and becausee the same is irrelevant, immaterial, and collateral to the matters in dispute in this cause.

Sustained.

Fourth. And also to strike out the three questions and answers of the said Samuel R. Brick, on the 4th page of the testimony taken before and returned by U. S. Commissioner Biddle, in Philadelphia, and he questions to and answers of the said witness on pages 5 and 6 of the same, returned for the reasons assigned in the objections returned on said page.

Sustained, except, as was the fact, that he had the stock placed in his name.

JOS. H. BRADLEY,
*Solicitor for Complainant.*

137 *Hearing at special term, agreement for.—Filed Mar.* 8, 1875.

In the supreme court of the District of Columbia, the 5th day of March 1875.

JULIA BRICK ET AL.
*vs.*
SAMUEL R. BRICK ET AL. } 3625. Equity docket 13.

It is agreed in this cause that the same may be set down for hearing upon bill, answers, exhibits, and depositions, and placed upon the calendar of the special term of this court for March, 1875, for argument as soon as the same shall be reached in the call of said calendar.

JOS. H. BRADLEY,
*For Compl't.*
W. B. WEBB,
*For Defendant.*

138 *Decree in the special term.—Filed April* 24, 1875.

In the supreme court of the District of Columbia.

JULIA E. BRICK, EDWARD D. WHITE, AND James How, executors of Joseph E. Brick, deceased,
*vs.*
SAMUEL R. BRICK, AND THE WASHINGTON Gas-Light Company. } No. 3625. Equity docket, 13.

This cause coming on to be heard on the bill, answers, replication, exhibits, and proofs therein, and the same having been fully argued by counsel for complainants and defendants respectively, and the court having fully considered the same, and being satisfied that the two hundred and fifty shares of the capital stock of the said Washington Gas-Light Company claimed in said bill by the complainants, belongs to the estate of Joseph E. Brick, together with all the increment thereof and
139 the accrued and unpaid dividends thereon, and also that complainants are the duly qualified executors of the said estate, does hereby order, adjudge, and decree, this 24th day of April, 1875, that the defendant, the Washington Gas-Light Company, on the surrender of the certificate by the complainants, the said executors, and the delivery of the same to the said company, do suffer and permit the said executors to transfer the same on the books of said company to themselves or to such other person or persons as they may see fit.

And, further, that the said Washington Gas-Light Company pay to said complainants forthwith, to wit, the said Julia Brick, Edward D. White, and James How, executors of the estate of said Joseph E. Brick, complainants as aforesaid, all and every sum or sums of money which may be due by said company as earnings, increment, dividends,
140 or otherwise, on the said shares of stock, and that the said company issue and deliver to the said complainants new certificates for all and every addition to said stock as the same is entitled to under the grant from Congress and the acts of said company.

And whereas this court is satisfied on the proofs and hearing that the decree heretofore made by this court in cause No. 2260, docket No. 10, in this court, was made in ignorance of the facts, and was coram non

judice, and is void, this court does further decree that the said Samuel R. Brick, complainant in said cause, do forthwith cause the said cause to be dismissed, and in default thereof that he be and he is hereby perpetually enjoined from setting up or in any manner claiming any right or interest in or control over the stock therein erroneously decreed to be his, and now herein decreed to be the property of the estate of said Joseph R. Brick, deceased.

141 And, finally, it is ordered, adjudged, and decreed that the defendant, Samuel R. Brick, pay the costs of this suit, to be taxed by the clerk of this court.

And from this decree the defendants pray an appeal in open court, which is accordingly allowed, and the defendants are ordered to file in said cause a stipulation in the usual form conditioned for the payment of costs.

By the court.

A. WYLIE, *Justice.*

*Appeal bond to gen. term.—Filed April* 24, 1875.

In the supreme court of the District of Columbia, the 24th day of April, 1875.

JULIA E. BRICK, EDWARD D. WHITE, AND James How, executors of Joseph R. Brick, plaintiffs,
*vs.*
SAMUEL R. BRICK & THE WASHINGTON GAS-Light Company, defendant. } No. 3625.

The defendant having appealed to the general term from the decree pronounced herein on the 24th day of April, 1875, in the equity court, and George A. McIlhenny, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform and pay its judgment, which they agree may be pronounced against all of them.

SAM'L R. BRICK, [SEAL.]
*Appellant.*
GEO. A. McIHENNY,
*Surety.*

Approved.

A. WYLIE.

142 *Decree in general term.—Nov.* 29, 1875.

In the supreme court of the Dist. of Columbia, in general term, November 29, 1875.

JULIA S. BRICK, EDWARD D. WHITE, & JAMES How, executors of Joseph K. Brick, compl'ts,
*vs.*
SAMUEL R. BRICK AND THE WASHINGTON Gas-Light Company, defendants. } 3625. Equity docket, 13

This cause came on to be heard upon the record from the special term, and was argued by counsel on both sides, and upon consideration thereof,

it is ordered, adjudged, and decreed that the decree of the said special term of April 24, 1875, from which the appeal to this court was prosecuted, be and the same is hereby affirmed with costs.

And from this decree the defendant here now prays an appeal to the Supreme Court of the United States, and the same is allowed.

By order of the court.

143 *Opinion of gen. term.*

Supreme court of the District of Columbia, in general term, September, 1875.

JULIA E. BRICK, EDWARD D. WHITE, AND James How, executors of Joseph K. Brick, plaintiffs,
*vs.*
SAMUEL R. BRICK AND THE WASHINGTON GAS-Light Co., defendants.
} In equity. No. 3625.

Mr Justice Wylie delivered the opinion of the court:

The controversy in *in* this case is over the title to 250 shares of the Washington Gas-Light Company's stock. Joseph K. Brick and Samuel R. Brick were brothers; the former a resident of Brooklyn, New York, and the latter of the city of Washington. In 1864 the stock was bought by Samuel R. Brick, with money obtained from his brother, Joseph K. Brick, and the certificate was issued in the name of the party by whom the money was furnished; was delivered to him and remained in his possession through his lifetime, and is now in the possession of his executors, the complainants in this cause.

In 1867, Joseph K. Brick died, and in 1871 Samuel R. Brick instituted a suit in equity in this district against the personal representatives of the former, setting up his claim to be equitable owner of the stock in question, on the ground that it had been bought for him by his brother, and offering to pay the amount of its cost in 1864, with interest from that date. But such personal representatives were non-resident, and the only service of process made upon them was by advertisement in a newspaper of this city.

A decree, pro confesso, was taken for default of defendant's appearance, which was subsequently made absolute, and the title of the stock was thus decreed to be in Samuel R. Brick.

The object of the present suit is to enjoin the said Samuel R. Brick setting up any claim to the stock in question under that decree, for the reason that the defendants in the suit were not subject to the jurisdiction of the court, and that the notice by publication was a nullity.

The defendant by his answer claims not only that the decree, so obtained is conclusive in his favor, but that independently of that decree he is the equitable owner of the stock.

We are of the opinion that the decree in question is of no validity as to the complainants in the present suit. They were non-residents themselves; had in their own possession the title of the stock in the form of a certificate; were served with no process; had entered no appearance to the suit, and were in all probability totally ignorant that any proceeding of the kind had been instituted. It would be a violation of the first principles to hold them bound by such a decree.

Upon the facts as proved, we are of opinion that the money with which the stock was purchased in 1864 was the money of Joseph K.

Brick, and that the certificate of stock was issued in his name and delivered to him, and is now in the hand of the executors of his will.

The evidence, it is true, shows that he made the purchase on the recommendation and through the agency of his brother, and that on several occasions Joseph K. Brick declared that he was holding the stock for his brother's benefit, and even made affidavit to that effect for the purpose of being relieved from a tax which otherwise he would have been obliged to pay for the stock.

But such declarations alone are not sufficient to create a trust, for the reason that the stock had been bought with his own money, and there was no delivery of it by means of an assignment or any form required in law to establish an executed donation. It is not the case of the delivery of property to one party in trust for another, where it would be bad faith in the former, and a fraudulent appropriation of what was not his own, to repudiate the trust. He who sets up a claim to property of any kind must establish his own right. If he has no right in himself, it matters not what declaration may have been made to others by the party to whom the property does in fact belong. If, for the purpose of avoiding taxation, the latter deny that he is owner, and asserts that some other is owner of property which he has bought with his own money, and the possession whereof he retains, and thus obtains exemption by imposing upon the officers of the government, he subjects himself to the penalties of the law provided for such cases, but his bad fath is no foundation for a claim of title on the part of any one else.

Decree affirmed.

144 In the supreme court of the District of Columbia, the 9th day of December, 1875.

JULIA E. BRICK, EDWARD D. WHITE, AND James How, executors of Joseph K. Brick, plaintiffs,
*vs.*
SAMUEL R. BRICK AND THE WASHINGTON Gas-Light Company, defendants.

No. 3625. Equity docket, 13.

Know all men by these presents, that we, Samuel R. Brick, S. J. W. Mintzer, and Ferdinand Sarmiento, are bound unto the above-named Julia E. Brick, Edward D. White, and James How, executors of Joseph K. Brick, in the sum of forty thousand dollars, to be paid to the said Julia E. Brick, Edward D. White, and James How, executors of Jos. K. Brick, or the survivor of them, their executors or administrators of such survivor, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this seventh day of December, 1875.

Whereas the above-named Samuel R. Brick and The Washington Gas-Light Company have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Samuel R. Brick and The Washington Gas-Light Company shall prosecute his said appeal to effect, and answer all damages and

costs if he shall fail to make good his plea, then this obligation shall be void: otherwise, the same shall be and remain in full force and virtue.

SAM'L R. BRICK. [SEAL.]
S. J. W. MINTZER. [SEAL.]
FERDINAND SARMIENTO. [SEAL.]

Sealed and delivered in presence of—
SAMUEL BALL.
JOS. K. BRICK.

Approved this 9th day of December, 1875.

D. K. CARTTER,
*Chief Justice.*

145 *Clerk's certificate.*

CLERK'S OFFICE,
*Supreme Court of the District of Columbia:*

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 4th day of October, 1876.

[SEAL.] R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Assistant Clerk.*

(Indorsement on cover:) No. 233. Samuel R. Brick and The Washington Gas-Light Company, appellants, vs. Julia E. Brick, Edward D. White, & James How, ex'ors, &c., of Joseph K. Brick. Dist. of Columbia sup. c't. Filed 13th October, 1876.

C

# Supreme Court of the United States.

## NO. 233.

SAMUEL R. BRICK AND OTHERS, *Appellants*,

*vs.*

JULIA E. BRICK AND OTHERS, EXECUTORS OF JOSEPH K. BRICK, *Appellees.*

W. B. WEBB,
*Counsel for Appellant.*

R. O. POLKINHORN, PRINTER, WASHINGTON, D. C.

# Supreme Court of the United States.

## NO. 233.

SAMUEL R. BRICK AND OTHERS, *Appellants*,

*vs.*

JULIA E. BRICK AND OTHERS, EXECUTORS OF JOSEPH K. BRICK, *Appellees*.

## APPELLANTS' BRIEF.

The bill in this case states that, on the 29th of September, 1864, Joseph K. Brick purchased through his brother, Samuel R. Brick, two hundred and fifty shares of Washington Gas Light Company Stock, and paid therefor five thousand two hundred and fifty dollars; that on the 6th day of October, 1864, a certificate for the said shares of stock was regularly issued to him; that the widow of the said Joseph K. Brick, who is one of the plaintiffs, personally knows that the purchase was made as alleged; that the certificate of the shares of stock was retained in the possession of Joseph K. Brick during his lifetime, was found among the assets of his estate after his death, and returned in the inventory filed by the executors in the Surrogate's Court of Kings County, New York, in 1868; that this stock was purchased by Joseph at the instance and for the purpose of aiding Samuel in some matters of business he had with the said Gas Light Company, and not for the purpose of speculation; that Samuel promised to defend Joseph from loss by reason of such purchase, and that

Joseph from time to time spoke of the said stock as the property of the said Samuel, but that Samuel never did pay for the same, nor enter into any contract with Joseph during his lifetime, nor with his representatives since his death, to pay for the same; that on the 3d of July, 1865, Joseph returned the said stock as his property in his schedule or tax list, and on the 5th of May, 1866, in order to get rid of the payment of the tax assessed thereon, said stock proving unproductive, made oath that said stock belonged to said Samuel, and was held by him, Joseph, for Samuel's use, and that said Samuel made the same statement to the officers of the Washington Gas Light Company; and that on the 25th of July, 1866, the said Joseph made a similar affidavit concerning said stock; that Samuel wrote to Joseph in May and December, 1866, about said stock, which letters are exhibited, and that, in fact, Joseph never parted with said stock to Samuel, but concluded to keep it, and did keep it until his death.

That Joseph died in August, 1867; that in January, 1871, Samuel filed a bill in this court, praying that the said Gas Light Company might be enjoined from allowing the said stock to be controlled by, or transferred to, the representatives of said Joseph; that said cause was so proceeded with that the injunction prayed was ordered, and an account taken by the Auditor, all of which proceedings were *coram non judice* and void; that the representatives of said Joseph have since applied to said Gas Light Company for the dividends upon said stock, and for permission to transfer the same, but that said company refused to grant said application because it believes itself to be restrained from so doing by the said injunction, setting up and alleging, as does the said Samuel, that the title to the said stock and to the dividends accrued thereon, has been determined by the decree made in said case.

The bill prays that Samuel R. Brick may be enjoined from setting up any claim to said stock, or the dividends accrued thereon; that he be ordered to dismiss his bill in the former case; that said Gas Light Company be ordered to pay to plaintiffs all the accrued dividends on the said shares of stock, and to transfer the same to them on its books, and for general relief. (Rec., pp. 1, 2, 3.)

The answer of Samuel R. Brick denies that Joseph purchased on the 29th of September, 1864, through him two hundred and fifty shares of stock of the Washington Gas Light Campany, and avers that on the date mentioned he purchased himself, and on his own account, five hundred shares of that stock, and paid for them with his check on the Manufacturer's and Mechanic's Bank of Philadelphia. The answer further states that the respondent was well acquainted with the affairs of the Gas Light Company; felt sure that its stock would rise considerably in value; was very anxious to purchase all that he could, and not having the money that he could devote to that purpose he applied to his brother, Joseph, for a loan; that upon the faith of a letter (Record, p. 53) from his brother informing him that he could raise the money for him at seven per cent., he bought the five hundred shares; that his brother loaned him five thousand two hundred and fifty dollars, and that he, respondent, for the purpose of securing the payment of the loan, and with the perfect understanding that he could redeem the stock at any time by paying the money loaned with interest, caused the certificate for two hundred and fifty shares of the stock purchased by him to be made out in the name of his brother; that he never made any promise to protect his brother from loss in said stock; that there could be no loss to him, said stock being in his hands simply as collateral to the loan made to respondent; that his brother had no object to

assist respondent in any matters of business with the said Gas Company, but on his account and for interests out of which he realized a profit, was desirous to have his name appears upon the books of the company as a stockholder; that his brother always spoke of the stock as belonging to respondent; made affidavit to that fact on two occasions, and directed respondent to inform the officers of the Gas Light Company that the two hundred and fifty shares of stock appearing in his name upon the books of the company were not his, but held by him for respondent; that these statements and affidavits were made in good faith and for no purpose of fraud or concealment; that respondent never offered to purchase the said stock, but did offer to redeem the same from his brother during his lifetime, and after his death from his personal representatives. (Record, pp. 17, 18, 19.)

The answer of the Gas Light Company shows that the company knew nothing more about the title to the stock than appear upon its books, but admits that it was notified by Samuel R. Brick that the stock, though appearing in the name of Joseph K. Brick upon its books, was in point of fact held by said Joseph for and on account of said Samuel; admits that it has refused to pay the dividends or allow the stock to be transferred to plaintiff, because it is restrained from so doing by the order of this court. (Record, pp. 21, 22.)

The testimony is printed in full in the record, and reference made thereto in this brief, under the different points.

The court below granted the prayer of the complainants, and by its decree found the title to the two hundred

and fifty shares of Washington Gas Light Stock in controversy to be in the testator, Joseph K. Brick, at the time of his death, and ordered that the said shares of stock, with the increments thereof and all dividends accrued thereon, should be transferred upon the books of the Gas Light Company to the complainants, the executors of said testator, and that the injunction granted in the former case, referred to in the bill of complaint, should be dissolved and that bill dismissed, the proceedings therein being *coram non judice* and void. (Record, pp. 64, 65.)

## Assignment of Errors.

In this decree the court below erred:

*First.* Because the testimony in the case shows that originally the said two hundred and fifty shares of Gas Light Stock were purchased by Samuel R. Brick, and were paid for by him, and hypothecated, with Joseph as security, for a loan, being placed in Joseph's name on the books of the Gas Light Company, simply for his protection as the lender of the sum of money mentioned in the proceedings.

*Second.* Because the affidavits of Joseph, and his letters and statements in evidence, show that he never considered himself the absolute owner of the stock, but that he held it for his brother Samuel, and subject to Samuel's right to redeem it; that Samuel offered to redeem it from Joseph in his lifetime, and since from his personal representatives, always treating it as something to which he had the right of property.

*Third.* Because it is apparent throughout the case that Joseph declared himself to be a trustee of the said stock

for Samuel, and manifested such relationship thereto, in writing, and by verbal statements uniformly during the whole period that the stock remained in his possession, going so far as to give notice to the officers of the Gas Light Company of the fact that he held the said stock as such trustee, and because, when this relationship of trustee was once manifested, it could not be changed by any act of the deceased.

*Fourth.* Because, in the former case, the court had jurisdiction of the subject-matter, and of some of the defendants, if not all of them, and, having such jurisdiction, could make the decree it did, and that decree cannot be successfully attacked in this proceeding.

## Argument for Appellant.

1. *The proofs show that from first to last the negotiations between Joseph K. Brick and Samuel R. Brick, concerning the Washington Gas Light stock, had relation to a loan by Joseph to Samuel upon the stock as collateral, and not to a purchase of the stock by Joseph.*

Samuel R. Brick, in his deposition (R., p. 25), testifies that he built the new works of the Washington Gas Light Company in 1858 and 1859, closing in December, 1859; that he was well acquainted with the affairs of that company, and knew, in 1864, that the company was going to apply to Congress for a law authorizing it to increase its capital stock, and this appears, too, in a letter written by him to his son September 18, 1864, and put in evidence by plaintiffs (R., p. 47), in which he says, speaking of the Washington stock, "If we get the bill thoough to increase the stock, our money will be

doubled with the surplus and advance in stock;" and he testifies (R., p. 26), that the effect of doubling the capital would be to double the value of the stock, giving two shares for one, and the fact appears beyond controversy that, acting upon this knowledge, he did, on the 7th and 27th of September, 1866, purchase eight hundred and ninety-two shares, paying for them $17,227 (R., pp. 24 and 27); that at this time the stock was much depressed, (see Mr. Bartol's testimony, R., p. 52,) and that so anxious was he to purchase this stock at that time, that for a considerable portion of the purchase money he gave his note at ninety days. (R., p. 31.)

Nothing could be more natural than that, at this time, with the knowledge he had of what was to be the future of this gas stock, Samuel Brick should be anxious to borrow money to enable him to purchase all he could of it, and it is just at this time that the correspondence between him and Joseph touching the Washington Gas stock begins. On the 12th of Septembes, 1864, Joseph wrote to Samuel the letter at page 53 of the Record. It will be observed that at this date Samuel had purchased 392 shares, and it appears from his own testimony, and in the several letters written by him to his son in September, 1864, and put in evidence by plaintiff (Rec., pp. 46 and 48), that he was very anxious to purchase all that he could get. In his answer (Rec., p. 8), and in his deposition (Rec., p. 25), Samuel states that he applied to his brother for a loan, and that upon the faith of a letter received from him, telling him he could raise money for him, he purchased the additional five hundred shares.

The letter of 12th September, 1864, is evidently in response to an application for a loan. The writer, Joseph K. Brick, informs Samuel, to whom the letter is written, that he has applied to Mr. Bills, from whom he evidently expected to get the money, but without success; nor has he any money himself, but that he can raise him the money

on call, &c. There is nothing in the letter, from beginning to end, that even intimates that at the time it was written Joseph Brick had a thought of becoming the purchaser of any shares in the Washington Gas Light Company. On the 26th of September, 1864, Samuel R. Brick purchased from Gaw and Macalester five hundred shares of Washington Gas Light stock, and paid for them $10,062.50 in cash. He says he did this upon the faith that his brother would raise him money, as he said he could in the letter of 12th September, 1864, and the fact is beyond all dispute that on the 29th of September, 1864, he obtained from his brother, Joseph K. Brick, $5,250 in a check upon the Atlantic Bank. The only other contemporaneous testimony that we have in relation to these transactions in the fall of 1864 is that of Mrs. Brick, the widow of Joseph K., who, under objection, testifies to two interviews between the brothers during that period. (Rec., p. 31.) At the first interview Samuel endeavors to induce Joseph to buy some Washington Gas Light stock, which Joseph declines because he has no money to buy with; and at the second, which seems to have resulted in the check for $5,250, given by Joseph to Samuel, the distinct understanding is that Joseph is to take the stock, and Samuel is to pay him for it afterwards. This testimony of Mrs. Brick is very vague and indefinite, but it establishes beyond all doubt that Joseph K. Brick did not, and would not purchase the Washington Gas stock, but took it upon an understanding with Samuel that he was to pay for it some day and take it as his own. Mr. Brick gives no dates for the interviews about which she testifies, but from all the circumstances it is evident that they must have taken place after the letter of the 12th of September, 1864, and before the date of the check, the 29th of September, 1864. Samuel bought the five hundred shares of stock of which the two hundred and fifty shares in dispute are part, and

gave his check for them on the 26th of September, (Rec., pp. 24–28,) and received the check of Joseph K. Brick for $5,250 on the 29th of that month.

There is no proof anywhere that Joseph changed his mind with respect to the stock; but, on the contrary, the proof is clear that he uniformly declined to purchase. There is nothing to show that at this time there was any change for the better in the value of the stock in the market, but abundant evidence to show that at this time the stock was still much depressed; and the proximity of the dates of the several interviews and transactions demonstrates that at the time this original negotiation between the brothers, Joseph and Samuel, was completed, that negotiation had reference only to a loan of money by Joseph to Samuel upon the strength of this stock as security, and that the right was reserved to Samuel to redeem the stock upon the payment of the money loaned to him, with interest. If this is once established, the character of the transaction cannot be changed, but must remain the same, unless it can be shown that Samuel consented to waive his right to redeem, and to give to Joseph K. Brick an absolute title to this stock, which he had evidently taken originally subject to the condition imposed upon it by this right of redemption. Before leaving this point, it will be well to ask attention to the testimony of Mr. Bartol, (Rec., pp. 51, 52.) Mr. Bartol was in 1866, and is now, the president of the Washington Gas Light Company. This, Mr. Joseph K. Brick knew perfectly well (Rec., 51) when he communicated to him the terms upon which he held the two hundred and fifty shares in controversy, and this evidence fixes beyond all controversy the character of the transaction, and shows that he, Joseph, thought he was entitled to have something more than the usual incidents of a loan for the redemption of this stock, viz., a part of the increased value.

Whether this testimony is calculated to render the terms of the trust uncertain and obscure, and if so what its effect must be upon the transaction in question, are points that will be considered further along.

But if there were any doubt upon this point it is set at rest by the subsequent acts of the parties with respect to this stock. It will be remembered that this stock was purchased in September, 1864. In July, 1865, Joseph K. Brick made return, as he was by law compelled to do, to the assessors of the State of New York, of his personal property (see the Schedule, Rec. p. 5), and in that return included $5,000 of the Washington Gas Light Company bonds, and was assessed accordingly, as appears from an extract of Tax Roll, 20th Ward, Brooklyn, 1865. (Rec. p. 49.) In May, 1866, Joseph made oath (Rec. p. 6) that the statement so made by him in July, 1865, was incorrect, and that he was erroneously assessed for that year to the amount of $5,000, which error arose from his having inserted in said statement $5,000 stock held by him for his brother; that he has no pecuniary interest in said $5,000, and had made the affidavit to have the error corrected. The correction asked for was made accordingly, (Rec. p. 49.) In addition to this, on this same day the 5th of May, 1866, Joseph wrote to Sam, informing him of what he had done (Rec. p. 6), and telling him to notify the President and Secretary of the Gas Light Company that while the stock in question stood on its books in his, Joseph's name, he in fact held it for the benefit of Samuel, and this notice was accordingly given by Samuel (Rec. pp. 28, 51.) The allegation in the bill is that this affidavit concerning the assessment, and notice to the authorities of the Gas Company grew out of the fact that the stock was not productive, and that Joseph was unwilling to pay assessments upon unproductive property. If this allegation were true it would afford no just ground for the false swearing which it confesses; but in

point of fact it is false, for on 23d February, 1866, Joseph K. Brick was paid a dividend of $250 on the Gas Stock (Rec. p. 39), and about that time Mr. Wakeman had offered him $23 or $23.50 per share, which was a considerable advance on what it is pretended he gave for it. Everything tends to show that at the date in question Joseph K. Brick was fully informed of the actual and prospective value of this stock, and knew that it was an excellent stock for those who owned it to hold. It is at this time, too, that Joseph, in response to the offer made to him by Mr. Wakeman (Rec. p. 33), informed that gentleman that he could not, or would not, sell without writing to Samuel to get his consent; and it is also about this time that in a conversation with Mr. Bartol, the President of the Gas Light Company, Joseph tells him in so many words that he had loaned Sam the money to buy this stock, and that he, Joe, held it for the loan (Rec. pp. 51, 53). And in this connection, and further to strengthen the evidence that the transaction with regard to this stock was that of a loan upon it as security, I adduce the letter of Samuel, dated May 7th, 1866 (Rec. p. 28), written to his brother, Joseph, in response to his of May 5th ( ec. p. 16). This letter is most unmistakable evidence that Samuel is proposing to settle an outstanding obligation for which these shares of stock are the security, and not to purchase the shares of stock as is contended. There is not one word in the letter about purchasing the stock; no offer made for it by the share or as a whole, as in such transactions is customary, but on the contrary an offer to pay back the amount of the check of the 29th of September, 1864, with interest, crediting on the amount the dividend already paid. It will be found upon scrutinizing this offer that it is much less than Samuel tells Joseph in this very letter the stock can be sold for, and greatly less than he, Joseph, had been offered for it by Mr. Wakeman (Rec.,

p. 33). What absolute folly it would have been in Samuel Brick to offer to purchase from Joseph, who was a shrewd man of business, an article like this stock, for an amount largely less than its actual market value, and, at the same time, in the very letter, making such offer to disclose to him not only the actual value of that stock but its prospective value also. The conclusion from this letter is inevitable that in this offer Samuel was but exercising the right he had to redeem this stock by paying Joseph the amount of his check of 29th September, 1864, with interest. It is true that Joseph makes no reply to this proposition, though urged to do so by Samuel on the 13th May (Rec., p. 35), but it is also true that on the 25th of July, 1866 (Rec., p. 5), Joseph again, under oath, made a return to the assessors of the State of New York of his personal property, in which he omits this Washington gas stock, and this too notwithstanding the fact that on the 24th of May, 1866 (Rec., p. 52), Congress had passed the act authorizing the Gas Company to increase its capital stock. This last fact is conclusive proof that Joseph did not regard himself as the owner of this stock, for he is denying that ownership at a time when the stock was double its original value. Joseph died in August, 1867; the inventory of his estate was not filed until February, 1869, in which this stock is returned as part of his estate, and on the 2d June, 1869, Samuel R. Brick offered to pay to the personal representatives of Joseph the principal and interest of the loan and take a transfer of the stock, which offer was not accepted. (Rec., p. 38.)

2. *The shares of stock involved in this controversy were purchased by Samuel R. Brick, and the title thereto by him placed in Joseph K. Brick for purposes of security; and this*

*fact, together with the declarations and admissions of Joseph made from time to time in reference thereto, are sufficient to raise a trust in favor of Samuel, and to constitute Joseph a trustee for his benefit.*

It is evident that the shares of stock in question were purchased by Samuel R. Brick. He purchased of Gaw, Macalester & Co. five hundred shares of Washington Gas Light Company stock on the 26th of September, 1864, (Record, p. 24,) and paid for them with his check on the Manufacturers and Mechanics' Bank, on the same day, (Record, p. 28,) and these shares so purchased, it is admitted, included the two hundred and fifty shares transferred on the books of the Gas Light Company to Joseph K. Brick October 6th, 1864. (Record, p. 14.) The whole testimony in the case shows that these are the only shares of stock in the Gas Light Company ever held by Joseph K. Brick. His honor, the justice who delivered the opinion of the court below (Record, pp. 66 and 67) has fallen into a mistake with respect to the purchase of and payment for this stock; it was not bought by Samuel R. Brick, with money obtained from his brother Joseph, nor was the purchase made for Joseph through the agency of Samuel, but the purchase and payment were made, as stated above, by Samuel, who afterwards caused the certificate of the stock to be placed in Joseph's name as security to him for the advance of money. (Record, pp. 25, 26.) The letter from Joseph, under date of September 12, 1864 (Record, p. 53), shows conclusively that he was to use his credit to raise money for Samuel to enable him to make this purchase of gas stock, and the check bearing date September 29, 1864 (Record, p. 37), shows that he was successful. There can be no question that this was an advance for which the stock was collateral, and not a purchase by Joseph as is contended.

A trust in respect to personal property is not within the statute of frauds, and may be created, as trusts were created before the statute, by parol.

Lord Loughborough in *Fordyce* vs. *Willis*, 3 Bro., C. R., 587;
*Steere* vs. *Steere*, 5 Johns, Ch. Rep. 1;
*McCubbin* vs. *Cromwell*, 7 Gill, Johns 157;
*Barrell* vs. *Joy*, 16 Mass., 221;
*Kimball* vs. *Morton*, 1 Hals., Chy. 31:
*Gordon* vs. *Greene*, 10 Georgia, Rep. 534;
*Kirkpatrick* vs. *Davidson*, 2 Kelly, 297;
*Day* vs. *Roth*, 18 N. Y., 448;

"It is not necessary that there should be any transfer of property accompanying the declaration of trust, whether the fund be in possession of the giver or another; the property may still remain as it was, and the giver may constitute himself or the possessor trustee of the fund; and in such case it is not necessary that the giver should expressly declare himself trustee. If he does any acts in relation to property to which he is legally entitled, though without reference to the creation of a trust, from which it clearly appears that he considered that the property, though legally vested in him, had ceased to be his, and had become the property of another, those acts may amount to a sufficient declaration that the giver holds the property in trust, so as to be binding upon him equally, as where the owner makes an express declaration of trust."

Spence's Eq., Jur. 2, p. 54;
Lewin on Trusts, 45;
Perry on Trusts, sec. 79;

"It may be stated then, as the law, that the statute of frauds will be satisfied if the trust can be manifested or proved by any subsequent acknowledgment by the trustee,

as by an express declaration, or any memorandum to that effect, or by a letter under his hand, or by his answer in chancery, or by his affidavit, * * * * * * or by a pamphlet written by the trustees; in short, by any writing in which the fiduciary relation between the parties and its terms, can be clearly read." Perry on trust, sec. 82, and see also same, sec. 86, where it is expressly laid down that a trust concerning chattels may be declared and proved by parol, and has been so expressly ruled in the United States.

In *Nab* vs. *Nab*, 10 Mod. 404, A devised all her personal estate to B, to be disposed of as B should think fit, and adds—by words of mouth, "you may, if you please, give one hundred and eighty pounds to my neice; but I leave it entirely to you." The neice brough her bill for the £180, and suggested a secret trust in the mother as to the £180. The answer admitted the parol declaration.

Lord-Chancellor PARKER—

The mother is to be esteemed as a trustee for the neice. It is not necessary by the statute of frauds for a trust that relates to the personalty to be in writing; if it were it is now in by the answer. This is not such a trust as not to be forfeited; but then the mother should have assigned some particular instance of misbehavior of the neice, and not in general only. The mother must pay the £180, but without interest.

And see also—

*Benbow* vs. *Townsend*, 1 M. & K., 506;
*Kilpin* vs. *Kilpin*, 1 M. & K., 520;
*Ex parte Pye*, *Ex parte* Dubost, 18 Ves., 140;
*Wheatly* vs. *Purr*, 1 Keene, 551.

In *Fordyce* vs. *Willis*, Lord Chancellor LOUGHBOROUGH

says: "with respect to personalty the case is the same as before the Statute of Frauds," and, in a note to the case, the editor says: "It is remarkable how little is to be met with in the books upon this subject. It is clear that the 7th section of the Statute of Frauds extends only to declarations of trusts of lands, which require not that they shall be created, but that they shall be manifested and proved by writing." (*Foster* vs. *Hale*, 3 Ves., 696; *Randall* vs. *Morgan*, 12 Ves., 74.) "Declarations of trust of personal property are therefore in the same situation as all declarations of trust were before the Statute.

When the trust is once manifested in writing (and the form of the writing is not material, it may be by an express declaration, or any memorandum to that effect by the trustee or by his affidavit, letter, etc., etc., Perry on Trusts, sec. 82), parol testimony is admissible to show what the terms of the trust are.

*Foster* vs. *Hale*, 5 Vesy, 308;
*Uran* vs. *Coates*, 109 Mass., 581.

And Perry on Trusts, sec. 82, note 3. Commenting on *Stere* vs. *Stere*, 5 John. Ch., 1.

Sir William Grant says: "Three things must concur to create a trust—sufficient words to raise it, a definite subject, and a certain or ascertained object."

*Conwys* vs. *Colman*, 9 Vesey, 322;
Lewin on Trusts, 68.

And it is well settled that the courts will not enforce trusts unless the objects thereof are well ascertained and certain. But it is equally well settled that parol testimony is admissible, even in case of trusts of real estate, if the trust is once manifested in writing, to show what the objects of the trust are, and the courts will, if the trust be once established in writing, look carefully at all the circumstances of the case, and let in all proofs to that

end, for the ascertainment and enforcement of the trust. With respect to personalty there is no need of writing to sustain the trust, the whole matter lies in parol. The trust may be declared and establishment by parol; and it follows, necessarily, that the objects of the trust may be manifested by similar proof.

The declarations of a trustee can be given in evidence to show how he held the estate.

1 Peere Williams, 822, *Ambrose* vs. *Ambrose*.

If a trust is once effectually created by parol it cannot subsequently be revoked or altered by the party creating it, for it is governed by the same rules that govern trusts created by writing.

Perry on Trusts, sec. 77, note 4, and cases cited therein.

The trust thus proved, however late, will relate back to its creation.

Perry on Trusts, sec. 82, note 1.

In the case at bar we have a distinct manifestation in writing of the trust; indeed, the bill alleges (Rec. p. 2), that Joseph K. Brick, the testator, made oath on the 5th of May, and the 25th of July, 1866, that the stock in question was Samuel's, and was held by him (Joseph) for Samuel's use. And we have also distinct proof of what the object of the trust thus formally created was. In his affidavit (Rec., p. 6) Joseph K. Brick, the trustee, declares and that too, under oath, that he holds the $5,000 of stock with which he is erroneously assessed, and designated in his return to the assessors (Rec., p. 5) as Washington Gas Light Company bonds, for his brother. And again on the same day on which this affidavit is made we have the letter of Joseph K. Brick to his brother Samuel

(Rec., p. 6) reiterating the declaration of this trust and requesting his brother to inform the president and secretary of the Gas Light Company of its existence. Here we have a most formal declaration of a trust, made, too, in writing, coming up in every particular to the requirements of the law concerning trusts of the most serious character. And in addition to all this, as if to bring the trust thus declared fully and perfectly within the various rulings in the books, we have the testimony of Mr. Bartol (Rec., pp. 51 and 52) detailing a conversation in which Soseph K. Brick, the trustee, designates the objects for which the trust was created, to wit: the security for a loan. It is submitted that under the light of the authorities cited, there could be no stronger proof of a trust for the benefit of the defendant, Samuel R. Brick, presented to the court.

In *Barkworth* vs. *Young*, 4 Drewy, 15, which was a case where a party had made an affidavit as to declarations made by him in respect to the disposition of certain property, the court say:

"Indeed, it is impossible not to feel that there seems even more justice in binding a person by such a statement of the agreement as is contained in this affidavit, which is prepared with all caution and deliberation, and which in addition to the party's signature, is stamped with the solemnity of his oath, and which was intended to be perused by the party with whom the contract was made, than by a mere letter," &c., &c.

3. *The plaintiffs, who are the executors of the testator, rea estopped by the affidavit made by him in respect to this stock, and cannot set up title in said testator.*

The recent decisions in the courts in this country and in England, appear to have given a much broader sweep

to the doctrine of *estoppel in pais* than that which formerly existed, and to have established, that in all cases, where an act is done, or a statement made by a party, the truth or efficacy of which it would be a fraud on his part to contradict or impair; then the character of an estopped shall be given to what would otherwise be a mere matter of evidence, and it will, therefore, become binding upon a jury even in the presence of proof of a contrary nature.

*Stephens* vs. *Baird*, 9 Cowen, 274;
*Presbyterian Cong.* vs. *Williams*, 9 Wend., 147;
*Pickard* vs. *Sears*, 9 Adol & Ellis, 469;
*Gregg* vs. *Wills*, 10 Adol & Ellis, 90;
*Darell* vs. *Odell*, 3 Hill, 219.

In *Carter* vs. *Bennett*, 4 Florida Reports, 342, the court instructed the jury, "that a party cannot be permitted to gainsay or deny his own solemn oath or record, made in the court, setting up facts sworn to as defence in the action; and when such oath is introduced to the jury it is conclusive against such party making such oath, and the highest possible evidence," with this qualification, "but he may be permitted to explain it, and show that it was made in ignorance of his right or under a misapprehension" in regard to them.

In *King* vs. *Clarke*, 8 Durnford and East, 220, in a question of qualification of a defendant for killing game, the convicting magistrates ground their opinion of his not being qualified on the fact that the defendant had in a former day sworn under an income act to an estate under £100 a year.

And the opinion of WESTERN, Justice, in *Freeman* vs. *Walker*, 6 Greenleaf, p. 70.

But if the court shall hesitate to apply the doctrine of estoppel in pais in this case, if it shall be of opinion that the plaintiffs are not estopped from denying the decla-

rations and admissions of the testator, with respect to the shares of stock in question, it is a most potent circumstance that these declarations and admissions are under oath. All the cases agree in giving the greatest weight to the sworn declarations of parties, and invariably treat them as little short of conclusive.

See Greenleaf on Evidence, vol. 1, § 204, and note.

"The mere fact that an admission was made under oath, does not seem alone to render it conclusive against the party but adds vastly to the weight of the testimony, throwing upon him the burden of showing that it was a case of clear and innocent mistake." Id., § 210.

And see *Barbworth* vs. *Young*, *Supra*.

It will be observed, in this connection, that in his affidavit, Joseph K. Brick, the testator, not only denies all title to the stock in himself, but distinctly, and in so many words, declares that he holds the stock for the use of his brother Samuel.

*Gratz* vs. *Beates*, 9 Wright, 495;
*Miltimore* vs. *Miltimore*, 4 Wright, 156;
*Braddle* vs. *Broomfield*, 4 Watts., 474;
*Evans* vs. *Draw*, 12 Harris, 62;
*Hill et al. Epley*, 7 C., 331;
*McMahan* vs. *McMahan*, 1 Harris, 380.

4. *The court had jurisdiction in the former case and its decree therein cannot be attacked in these proceedings.*

The Gas Company, one of the defendants in that case, has its habitation within the jurisdistion of the court, and was amendable to its process, and the shares of stock could only be transferred upon its books.

Notice of these proceedings was given to the defendants, not only by publication in the manner prescribed by the act of Congress in such case made and provided

(Record, p. 12), [Rev Stat. of U. S. relating to District of Columbia, Sec. 787] but they were served with a copy of an order made by the Justice of the Supreme Court of the District of Columbia holding the Special Term, and proof of such service is filed in the cause. (Record, p. 13.)

The general and well-settled rule of law in such cases is, that when the proceedings are collaterally drawn in question, and it appears upon the face of them that the subject-matter was within the jurisdiction of the court, they are voidable only. The errors and irregularities, if any exist, are to be corrected by some direct proceeding, either before the same court to set them aside, or in the Appellate Court.

*Thompson* vs. *Tolme*, 2d Pet., 163;
*Voorhies* vs. *The Bank of the U. S.*, 10 Pet., 475;
*Decatur* vs. *Paulding*, 14 Pet., 599;
*Comegys* vs. *The State*, 10 Gill John., 182, &c.;
*House* vs. *Wiles*, 12 Gill Johns., 338.

Where the property in controversy is within the limits of the State, and the claimant resides abroad, the Chancery Court has undeniable jurisdiction over the case. 1 Ark., 19, 2 McCord's Ch., 487.

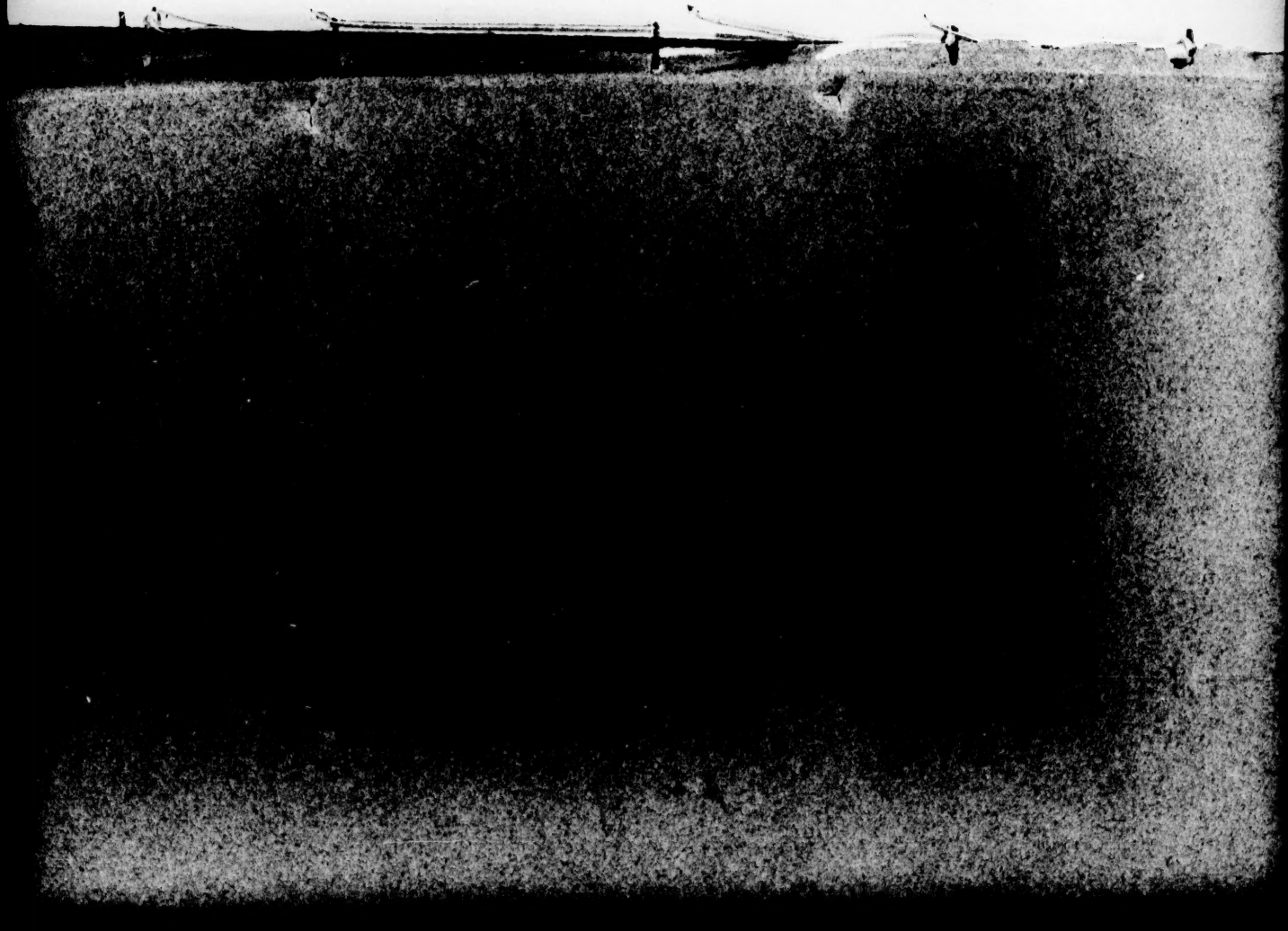
So, where the party defendant is within the State, and the land or other property in contest is beyond its limits, although the proceeding is *in rem*, there is no want of jurisdiction.

*Caroll* vs. *Lee*, 3d Gill Johns, 509.

Where a court has jurisdiction, it has a right to decide every question in the case, and its judgment is final until reversed.

*Elliott et al.* vs. *Piersall et al.*, 1 Pet., 340;
*Mechanics' Bank of Alexandria* vs. *Seton*, 1 Pet., 305.

W. B. WEBB,
*Counsel for Appellant.*



# Supreme Court United States.

OCTOBER TERM, 1878.

No. 233.

SAMUEL R. BRICK AND
THE WASHINGTON GAS-LIGHT CO.,
*Appellants.*

*vs.*

JULIA E. BRICK, EDWARD D. WHITE, AND
JAMES HOW, EXECUTORS OF JOSEPH K. BRICK,
*Appellees.*

*This is an appeal from the equity side of the Supreme Court of the District of Columbia.*

The matter in controversy is between the appellant, Samuel R. Brick, and the appellees' executors of Joseph K. Brick, and is as to the title to two hundred and fifty shares of the Washington Gas Light Company stock.

The substance of the case on the part of the appellees is, that in September, 1864, Joseph K. Brick, then residing in Brooklyn, New York, bought from or through his brother, Samuel R. Brick, two hun-

dred and fifty shares of the stock of the Washington Gas Light Company, a company incorporated and carrying on business in the city of Washington.

The evidence of this purchase consists in the check of said Joseph K. Brick as follows:

BROOKLYN, N. Y., *September* 29, 1864.

Atlantic Bank pay to Samuel R. Brick, or order, fifty-two hundred and fifty dollars ($5,250.)

J. K. BRICK. (Rec. p. 37.)

The stub or margin of said check "Washington Gas Light stock, September 29, 1864, (250 shares) at $21 per share, (par 20) $5,250. (Rec. p. 30.)

That Samuel R. Brick in Sept., 1864, ordered two hundred and fifty shares of this stock to be transferred to said Jos. K. Brick. (Rec. p. 26, 27.)

That on the 6th October, 1864, two hundred and fifty shares of said stock were transferred to Joseph K. Brick on the books of said Company (Rec. 37), and a certificate therefor issued to said Joseph K. Brick, (*Idem.*)

That Joseph K. Brick held the said certificate to his death, about the 7th Aug., 1867, and received whatever dividends it was entitled to during his life. (Rec. 51, 52.)

That it was returned as part of the inventory of his estate, to the proper authorities in Kings county, State of New York, about the 1st February, 1869. (Rec. p. 18.)

And is now held by his executors; and during his life time no adversary claim to it, legal or equitable, was ever set up by any one, nor until the 24th Jan-

uary, 1871, (Rec. 7,) more than six years after his purchase, and nearly five years after his death.

Joseph K. Brick having died, the appellant, Samuel R., contested the probate of his will in Kings county, New York, filing his caveat in 1868.

Letters of collection *pendente lite* were issued by the Kings county Court to Edward D. White and Joseph Merritt on the 22d Oct., 1868. (Rec. 9.)

On the 24th January, 1871, Samuel R. Brick filed his bill, No. 2260, in the Supreme Court of the District of Columbia, against White and Merritt, collectors, and the Gas Company setting up that Joseph K. Brick was not the purchaser of the said stock, but that he lent the said check to him, (Samuel,) and he, (Samuel,) caused the stock to be transferred to Joseph, as collateral security for the said loan, and claimed the right to redeem, offering to settle and pay according to the terms of said loan.

The Court proceeded to a final decree in said cause; that the stock belonged to Samuel, and enjoined the Company from recognizing any right in Joseph. This is the substance of the matter. The whole proceeding in that cause, numbered two thousand two hundred and sixty, is set out in the present transcript, beginning p. 7 and down to and including p. 17 of the Record.

It is sufficient to say here that there never was any service in that cause on White, or Merrit; and if there had been, their office of collector was such, that that Court could not have had jurisdiction; they could neither have sued, nor been sued in that tribunal.

The will of Joseph K. Brick was admitted to probate in Kings County, and letters testamentary issued to the appellees, Julia Brick, Edward White, and James How on the 11th April, 1872, (p. 4.) Sam. R. Brick prayed an appeal from the decree admitting the will to probate.

Pending that appeal, the executors applied to the defendant, the Gas Company, to pay to them the accrued dividends standing credited to the said stock on the books of said company, and also to permit them to transfer the said stock. The Company refused to do either, and set up that by the said decree in said cause, numbered two thousand two hundred and sixty, it had been established that the said stock belonged to Samuel R. Brick, and the company was restrained from permitting said transfer to be made on its books, which was the only mode in which a transfer could be made.

The contest over the will of Joseph K. Brick was continued until the year 1874. On the 9th May, 1874, the bill in this present cause was filed by the executors, and sets up, in substance, the facts hereinbefore stated, and prays that Samuel R. Brick may be forever restrained from pretending to, or setting up any claim to the said stock, or to the dividends thereon, or to any part of the principal or dividends aforesaid, and be ordered and required to dismiss his said bill in said cause, No. 2,260, and, on his failure to do so, that it be dismissed by order of this court; that the Gas Company pay the dividends to the executors, appellees, and permit them to transfer the stock; and that Samuel R. Brick pay all the costs of the suit.

Samuel R. Brick and the Gas Company both appeared and answered, the Gas Company relying solely on that decree in said cause, No. 2,260.

Samuel R. Brick denies the purchase set up by the executors, and insists that the stock was his; that he borrowed the $5,250 from his brother, Joseph, and had this stock transferred to him as collateral security, and declares that he has always been ready and willing to repay to him the money so borrowed, with interest, on an accounting to be had between them; that he never offered to purchase the stock from Joseph, but that every offer he made was to redeem it, and he relies on what he sets up as admissions by his brother, that the stock did not belong to him, but did belong to Samuel, especially an affidavit made by Joseph to that effect, (p. 6, Record,) and admissions to the same effect made by him to different persons.

There was a general replication, issue, and testimony taken.

So that the whole matter is narrowed down to the single question as to whether the transaction between these brothers in September, 1864, was a sale of the stock, or a loan of money, and the stock transferred as collateral.

Before proceeding to an examination of the proofs in the cause, it is proper to dispose of some exceptions filed by complainants to certain testimony taken by defendant, Samuel R. Brick.

The exceptions will be found on p. 63, Rec. The objections and the testimony will be found on pp. 52, 53, 54; 25, 26, 27.

The appellees have nothing to add to the reasons assigned in support of these objections, except as to the third exception, and as to that they say:

1. The witness was the appellant himself. He was present at the cross-examination of his son in Brooklyn, New York, (see Rec., p. 42 to 49, for that examination,) on the 5th January, 1875; and see p. 55 for his admission that he was there. He is now to be examined touching both the examination and cross-examination of his son at that time. Every rule of justice and fair dealing—and, as is believed, every rule of legal procedure on that question—required that he should have been examined in the presence of his son, or have given notice and opportunity for him to be present to explain and correct.

2. It relates to matters wholly irrelevant to those in controversy in this cause, with a single exception, and that is as to whether he ever referred his son to Joseph K. to get some of the stock in this company, and that may possibly, though remotely, refer to the subject-matter of the suit; but it is covered by the first objection.

3. As to striking out the questions and answers objected to on pages 25, 26, and 27 of the record.

The testimony relates to transactions between the testator and the witness, and is directly against the act of Congress, 3d March, 1865, 13 vol., Stat. 533.

There is no error in these rulings of the court below.

**As to the Merits of the Case.**

1st. The case made out on the part of the com-

plainants as set out in the statement seems to be conclusive of their right to recover.

It shows with the utmost distinctness that com-
plainant's testator purchased this stock i
faith, and paid more than the marke
his main object being to give his brot
in the Company." (p. 6.)

It was a purchase, not a loan of money. He had not this money when called on, but could raise it for his brother. (See letter.) There is no evidence that he was again called on to lend.

His brother Sam offered, at least twice, in writing, to purchase it from him. (See letter, pp. 34, 35, and 37.)

He writes to Sam on the 5th May, 1866 (p. 6), that he has sworn that the stock belongs to him, Sam, and is held as a trust for him, and this to avoid the payment of a tax on stock which, he says, is paying him nothing *(then it was his stock, or he had no right to receive anything from it)*, and he asks Sam to tell the same story to the Gas Company. (See p. 6.)

And Sam replies next day saying he will do so (p. 28), and in the same letter makes proposals for *the purchase of it;* not a word about a mortgage or security, or that it was his and he had an equity of redemption. He acquiesces in what Joseph says, and recognizes his ownership. But not only so. His letter offering to purchase was dated 7th May, 1866, and he follows it up on the 13th May (pp. ~~34~~ and 35), calling the attention of his brother to this offer, and wishes to know if it met with his approbation or not. So that it is perfectly clear that at that time it was

claimed by Joe and admitted by Sam that the stock belonged to Joe. As if to remove all doubt on the matter he returns to this subject again on the 16th December, 1856 (p. 37), and in his letter of that date says: "Now what will you take for it clean out; let me know." Add to this the facts that the inventory of Joe Brick's estate was filed in the proper office, with this stock embraced in it, sometime in 1868-9, probably about the 1st of the month of February; that this was a public act, and record and notice to everybody, especially to those who were then contesting the will under the caveat filed by this very party, Sam Brick, and that neither then nor at any other time until nearly five years after the death of his brother, did he ever set up or pretend to any claim to this stock which could be brought home to the knowledge of his representatives, and it seems to be so conclusive of the question, as not to admit of any discussion as to the title of Joseph K. Brick's representatives.

2d. But it is answered to all this,

First. That Joe Brick held it as a trust.

Second. That he at different times in his lifetime said it was the property of Sam, and held by him in trust, and on one occasion said he had lent money to Sam to purchase it, and held it as security for that loan.

**As to the First.**

How was that trust created? When? What were the terms? If to secure the repayment of a loan what were the terms? How was it evidenced? When

was the money to be repaid and what the rate of interest? On all these points the appellant has failed to produce proof.

What does Mr. Sam. R. Brick himself say (Rec., p. 28,) in reply to his brother's offer to sell to him: "I saw your check for $250; however, if you have not received it, send me your order to receive it for you at once, and I will forward it to you, *or if you don't wish to keep the stock I will try and raise the money and take it off your hands.*"

Is this the language of a *cestui que trust* to his trustee, of a debtor to his creditor, of a mortgagor to his mortgagee, having a right to redeem? Certainly it is neither. Look at the letter to which this is a reply (bottom p. 53 and over): "*If you remember some year and a half ago, when I got the Washington gas stock, I took it to give you strength in the Company, which was the fact.*" "*I told them it stood on the books in my name, but I held it for your benefit, which is so, as I should never have bought under any other circumstances.* In the meantime I will give you a power of attorney to sell *or take it to yourself*, as I need funds in my business, and must raise some money at once." Is this the language of a mortgagee to the mortgagor of a chattel? or is it not that of a purchaser who had purchased to help his brother, and found it necessary to dispose of this stock to raise money and was willing to let his brother have the first chance to buy it. "I took the stock to give you strength in the Company." "I should never have bought under other circumstances." Here is the clearest and most unmis-

table claim of ownership of the stock as purchaser, not as mortgagee. See also Letter of Sam Brick Sept 12. 64

Turn again to page 28 and see how Mr. Sam Brick himself then understood it: "I will take the stock; allow you seven per cent. interest from the time you gave your check, deducting the dividend February 15th, that is if you have received the same; if not, you give me your order to receive it, if you please, as per your attorney; then I shall stand thus: nineteen months interest at seven per cent., $581.12; stock, $5,250: total stock and interest, less the $250 dividend, $5,581.12; or with the February interest, $5,831.12. You will observe that I have calculated the interest upon the whole $5,250.00." Is this the language of a mortgagor to his mortgagee? Is there anywhere in these two letters, a single passage or word which can be tortured to the support of this ingenious scheme to wrest this fund, after the death of the owner, from the hands of his representatives? Every word is full of the meaning that Jos. Brick was the true, lawful, *bona fide* owner of the scrip, and the appellant had not a scintilla of legal or equitable right or interest in it. As if to extinguish any such pretence on his part we have but to look to the transaction of the purchase. Sam R. Brick has taken the trouble to prove that he purchased the stock for $20 a share, and had so much of it transferred to his brother at $21, or five per cent. advance. They were quite evidently, both of them, shrewd business men, both engaged in quite large transactions, and among the last men to be found, one to ask for a loan on stock greater than the market value of the stock at

the time, or the other to lend a large sum of money at such an advance on the security, an advance of five per cent. on the shares. No, the evidence justifies the belief that Sam took advantage of his brother in this matter, and never disclosed to him that he had bought at $20. and at the same time sold to him at an advance of five per cent, but led him to suppose he was paying the fair market value.

But if there was a trust it was a specific, not a resulting trust. If not to be discharged within a year, it must have been in writing or it was void. There is no pretense that it was to have been or might have been discharged within a year.

Here the muniments of title are in the hands of the purchaser, and the evidence of his payment of the price of the purchase undisputed. No part of the purchase money was paid by this pseudo *cestui que trust*, no promise to return it, no time for the repayment set up, none pretended to have been fixed. There is no witness, for Sam. R. Brick is excluded by the statute, and Joseph is dead; and there are no circumstances to support the pretense now set up in the face of the check, the stub, the certificate of stock and the correspondence between the brothers.

The answer is, if it was a specific trust, it must have been in writing to enable the party to invoke the aid of a Court of Equity, and

Second, it is against the clear unequivocal acts of the parties as between themselves, and

Third, it would be inequitable after such a lapse of time and change of circumstances, to give countenance to such a presumption.

Nor is the appellants' case helped by any other alleged admissions of testator.

This matter is very well put in the opinion of the Court, at p. 67 of Record.

Let us see what these alleged admissions are:

1st. Rec. p. 5. The assessment of Jos. K. Brick's property shows that the only personal property he returned, was "$5,000 of the Washington Gas Light Co. bonds, D. C." We must take this to be the $5,000 stock certificate. His affidavit is dated 3d July, 1865. On p. 20 Rec. is another copy of the same return, bearing the same date—certified by the same officer, with this difference, that to the entry of the $5,000 in the first, is added, "Stock. Ret'ned as a loan." No proof has been taken as to either of those exhibits. On p. 21 there is a copy of another affidavit made by Jos. K. Brick in regard to this same entry, bearing date 5th May, 1866, in which he says, "that he was erroneously assessed in the said year (1865) to the amount of $5,000, and the said error arose from deponent having inserted in said statement $5,000 stock, held by him for his brother; and further, that deponent had no pecuniary interest in said $5,000." There is no excuse for this. It shocks the moral sense but, unhappily for the condition of the country, it is far from being a solitary instance of just such efforts to get rid of a tax, and made too, by men who held their positions of respectability among their fellows, and were relied on and trusted. But what has that to do with the appellant in this cause, or he with it? On the same day that he made this affidavit, he wrote to his

brother Sam. that remarkable letter of the 5th May, 1866, (p. 6 and 7) in which he says,—"Now, there is a State law in this State that gives assessors power to assess all stocks, owned outside of the State, to the full amount, at the same rate as real estate, which is about 3½ per ct." "Now, this has been got hold of by our assessors and *I made the above statement to set them aside.* I told them it stood on the books in my name, but I held it for your benefit, which is so, as I should never *have bought it* under any other circumstances." "Now, I want you as soon as you receive this to *advise the president or secretary* that such is the case, and if they write from here to know anything about the matter, to say so or pay no attention to them."

Sam replies on the 7th, and says, (at p. 35,) "*I will give them notice at Washington that the stock is mine, but held by you or in your name,*" and, in the same letter, makes his proposition to purchase. Sam, then, was not injured by this representation, but connived at it, at the same time admitting Joseph to be the owner.

2. The next admission is to Mr. Bartol, the president of the Company. He says, (p. 51): "About the year 1866, meeting Mr. Jos. K. Brick in New York, he asked me the then price of Washington gas shares, and told me he had loaned his brother Sam the money to buy the two hundred and fifty shares of stock; that he (Joe) held the stock; that Sam wanted to obtain the stock, and he (Joseph) thought that he should have a portion in the advance in shares, and he wanted to know what I thought of it; 'that he held

the stock for the loan.' It was soon after the payment of the February dividend, 1866, this conversation occurred. Then it was shortly before or about the time of Joseph's letter of 5th May, 1866, to Samuel, and is consistent with, if not part of, that scheme to get rid of the payment of the tax, and the letter shows the conversation must have been after the letter, for if Joseph had, shortly before that, told the president of the Company, it would have been useless and absurd to ask Sam in that letter to give to the president the very information which he himself had just given. But how did that affect the relations between the brothers, and how could that estop Joseph, when he saw fit, from setting up his claim, with full knowledge on the part of Sam of these statements, and the purposes for which they were made, the falsity of them, and that, too, with his concurrence?

3. Another effort was made, and persistently made, to prove an admission to Burr Wakeman, (p. 32, &c., rec.;) but his evidence is clearly against this pretension, and shows that Joe Brick claimed the right to this stock, and offered to sell it. At page 33 he says he offered to sell, and he (Wakeman) made an offer for it; that Brick (p. 33) replied that the price was about what he expected, but that he either *could not or would not* sell without writing to Samuel to get his consent. The appellants tried very hard to get him to say that Sam owned the stock, but his persistent reply was, in substance, that nothing was said about the ownership of the stock.

When was this—in 1865 or 1866? If in 1865, it clearly exhibits the doubt of Joe as to the value of

the stock; but, as he had purchased it to give Sam "strength in the Company," (p. 6,) it is quite consistent with his ownership. But this matter is put at rest by the testimony of Wakeman himself, (p. 34,) that the conversation was in April or May, 1866. Bartol, (p. 52): "In 1864 and 1865 the stock was much depressed;" and page 52: "In January, 1866, the Company paid a dividend, and the stock advanced." So it was after the stock had advanced. But Bartol further says, (p. 52): "Shortly before May, 1866, the Company applied to Congress for an increase of capital stock, which was granted by an act of May 24th, 1866."

It was, then, undoubtedly, after the stock had advanced beyond par to $23 or $23.50 that Burr Wakeman (p. 33) made this offer to purchase.

Now, on the 5th May, which preceded this, Joe had offered the stock to Sam, and it may, therefore, well be concluded that he said to Wakeman "he *would* not," not that he "*could* not," sell without writing to Samuel to get his consent.

We, therefore, put this testimony out of the case as either inconclusive, or shown to have occurred under circumstances which do not entitle it to any credence as an admission that the stock was Samuel's.

Against this we have the clear and positive proof of Sam Brick, Jr., (p. 43,) that in the year 1865 he applied to his father, the appellant, to purchase stock in the Washington Gaslight Company, and he referred him to his uncle, Joseph K. Brick; that he applied to him, and his reply was he had had the stock so long he intended to keep it, and that he

communicated this to his father; and here we have the assent of both minds—Samuel referring the enquiring purchaser to Joe, and Joe replying to him that he had had it so long he intended to keep it.

Does this look like a trust or mortgage? Certainly there is no resulting trust, and nothing to support it. There might be some question here if complainant were seeking to enforce a contract. But that is not so. The complainants are here seeking to enforce their rights, justified by the complete muniments of their title, and are met by a pretence of a trust by the parties contesting that title. The burthen of proof is upon him who sets up this trust, and it must be not only proof of a moral obligation, but such proof as will take it out of the statute of frauds and will be so clear that the court cannot hesitate in pronouncing upon it. If it is simply a resulting trust arising from the circumstances of the case, and not prohibited by the statute of frauds, the proof must be irresistibly clear. On both of these grounds the offered proof of admissions is wholly insufficient, the muniments of title are with the appellee, and admitted to be conclusive but for the constructive evidence of a trust drawn from the admissions of the testator.

But, the questions how far such admissions operate by way of estoppel, or are admissible as proof, not conclusive against the party making them, are of no moment in this cause.

1. It may be conceded that where the party setting up the admissions has acted upon them and been induced to adopt a particular course of proceeding, which would have been injurious to him, if they were

untrue, or beneficial if true, that the party making the representations would be estopped from disproving their truth; and that upon grounds of public morals and public policy.

But the true rule perhaps will be found to have been laid down by the Court in 9 B. C. 577, 586, *Heane* vs *Rogers*, as follows: "The express admissions of a party to the suit, or admissions implied from his conduct are evidence, and strong evidence against him; but he is at liberty to prove that such admissions were mistaken or *were untrue*, and he is not estopped or concluded by them, unless another person has been induced by them to alter his condition; in such case a party is estopped from disputing their truth *with respect to that* person, and those claiming under him; *but as to third persons he is not bound.*" See also *Graves* vs. *Key* 3, B. and Ad. 318 (*n.*); *Pickard* vs. *Sears*, 6 A. and E., 469, 474; *Jennings* vs. *Whitaker*, 4 Mun., 51 to 53; *Tuffly* vs. *Hayes*, 5 N. H., 452. And their admission at all to establish a resulting trust is strongly condemned in *Malin* vs. *Malin*, 1 Wend., 625, 648, 649, 653, 654; Green Ev. 1 vol. § 209, § 212.

There can be no pretence in this case that Samuel R. Brick was in any way influenced by or acted upon them; or that Joseph K. Brick, *quo ad* Samuel was bound by them. On the contrary the proof indisputably establishes that Samuel, being immediately after the act informed by Joseph as to what he had done, and the object with which he had done it, and being asked by him to assist in giving color to the

representation which he, Joseph, had thus made, replies, consenting thereto. He was not deceived. He admits that Joe owned the stock; that Joe had purchased it to give him, Sam, strength in the Company; offers to buy it; proposes terms of purchase, which would about make Joe whole; and which, as he thought, Joe being pressed for money, would gladly accept.

2d. The proof (Rec., 52–53,) shows that the scheme for doubling the stock, out of its own earnings, was then ripening. Of all this Joe was ignorant; but he saw something was "moving the waters," and he is making inquiries, as proved by Wakeman (p. 35), and feeling his way. On the other hand Sam was posted up and was acting in concert with the secretary of the Company (R., p. 47). "You can say to Z. and B. that the secretary is going to give me a list of all the stockholders, and the amount held by each; the *secretary and I work* together; he is bnying also." This accounts for his pertinacity in his effort to buy this stock. But he does not tell his brother. Oh, no. He writes to his son not to let the brother know what was going on (R., p. 48): "Now, my son, don't say one word about any of my operations to any one, *your Uncle Joe*, or any one in the gas office."

Nor does he take any step in the lifetime of Joe from which the latter could gather that he intended to set up a claim to the stock, nor till after the stock had actually been doubled, out of the surplus on hand. (R., p. —.)

There is no error in the decree.

Upon the whole record it is most respectfully submitted to the court that this is one of those cases in which the power of this court to impose damages for an abuse of the right of appeal may be justly invoked, and they pray that an order to that effect may be passed.

JOS. H. BRADLEY,
*Sol. for Appellees.*